

APPENDIX G: 2009 RESPONSE TO COMMENTS

Presented below are the comments received on the Draft Recovery Plan (RP) and Programmatic Environmental Impact Statement (PEIS) released for public review in 2009. NOAA and the other Trustees have prepared responses to the concerns and issues raised in these comments, also provided below. Eight stakeholders provided comments: Boyer Logistics (M.C. Halvorsen), King County Department of Natural Resources and Parks (KC), U.S. EPA region 10 (USEPA), Duwamish River Cleanup Coalition (DRCC), People for Puget Sound (PFPS), Water Resource Inventory Area 9 Watershed Ecosystem Forum (WRIA 9), City of Seattle Public Utilities (Seattle), and the Port of the Seattle (POS). The stakeholder comments are paraphrased and/or quoted directly and are written in italics with the commenters identified in parentheses, the actual comments are included in the last pages of this document.

Table of Contents

Preferred Alternative.....	1
Habitat Focus Areas (HFA)	2
Restored Habitat: Types, Characteristics, Priorities	3
Habitat Valuation	4
Coordination	6
Project Planning and Implementation Issues	7
Impacts Analysis.....	10
NRDA Process, Injury Assessment Issues.....	12
Monitoring and Stewardship	14
Requests for Clarification and Additional Information	15
Editorial Comments	18
Actual Comments from the Public from 2009	19

Preferred Alternative

Several commenters support the preferred alternative. (KC) (USEPA) (DRCC) (PFPS) (WRIA 9)

Response: Support noted.

The description of typical kinds of restoration actions under the preferred alternative is well stated and consistent with recent practical experience in the Duwamish Waterway. (POS)

Response: Comment noted.

What is planted in the banks will die. The dead material would accumulate on the bed of the river, which would be excessive, which in turn would cause the algae to grow, which in turn would suck the oxygen out of the river. This plan will surely kill the river. (M.C. Halvorsen)

Response: Riparian vegetation has been successfully established at several locations along the Lower Duwamish River (LDR). Because the benefits of riparian vegetation to river systems are widely recognized, the Trustees believe that planting riparian vegetation as part of restoration projects will only benefit the river.

Habitat Focus Areas (HFA)

Commenters support HFA approach that gives highest priority to HFA1 that benefit all injured species. (DRCC) (WRIA 9)(Seattle)

Response: Support noted.

Commenter encourages Trustees to only modestly discount the value of projects in HFA3 compared to HFA1 because there is great ecological benefit from projects throughout the Upper Duwamish. (WRIA 9)

Response: The Trustees appreciate the ecological benefit from projects in HFA3, but are discounting the value of projects in this HFA for the purpose of Natural Resource Damage Assessment (NRDA) restoration because restoration there will provide relatively little benefit to the marine and largely estuarine aquatic species injured in the LDR.

The upstream 1.5 miles of HFA1 is not straightened and developed as the rest of HFA1 is, and so should be included in HFA3 rather than HFA1. (M.C. Halvorsen)

Response: The Trustees disagree with this comment and have kept the farthest upstream 1.5 miles in HFA1. The designation of the HFAs is based on the environmental conditions and importance to the injured natural resources, not the state of development. HFA1 includes the portion of the Duwamish River below the North Winds Weir and has mixed salinity. HFA3 is above the influence of marine water and is entirely influenced by freshwater.

If the restoration work is intended to focus on the transition zone for juvenile salmon, the areas upstream of river mile 3.5 (measured from the mouth of the Duwamish River) in HFA1 and areas in HFA3 should be the focus because areas downstream have high salinity. (KC)

Response: The restoration effort is not focused on the transition zone for juvenile salmon exclusively, but on benefiting the suite of resources injured in the LDR, including areas downstream of river mile 3.5. Incorporating parts of HFA3 into HFA1 is not appropriate, as conducting restoration in HFA3 will not

benefit the entire suite of injured natural resources; some of the injured species would not be expected to be present in HFA3. Habitat restoration in HFA3 would provide less direct benefit to those species compared to projects in HFA1.

Commenter objects to conducting any restoration outside of the LDR and Elliott Bay. (PFPS)

Response: The Trustees are prioritizing restoration within the LDR (HFA1) and will require settlements with Potentially Responsible Parties (PRPs) to provide for some restoration within HFA1 as part of any package, because projects in this area have the greatest potential to benefit the entire suite of resources injured as a result of hazardous substance releases. Inner Elliott Bay (HFA2) is the next highest priority for restoration. However, we will consider restoration in the other HFAs as part of a proposed settlement or for implementation by Trustees as a lower priority. Projects in these HFAs will address at least some of the injured resources, and thus there is a nexus between natural resource injuries and restoration in HFA3 and HFA4. Additionally, the Trustees recognize that practical restoration opportunities within the LDR itself may not be sufficient to provide full compensation.

Restored Habitat: Types, Characteristics, Priorities

Commenter concurs with the primary focus of restoration being on the creation of mudflat, marsh, and riparian habitat, as these habitat types are most needed to restore the estuarine ecology of the Duwamish and of greatest benefit as salmonid habitat. (WRIA 9)

Response: Support noted.

Commenter supports the general approach presented in the restoration plan identifying the types of all-purpose habitat that should be developed. (KC)

Response: Support noted.

Commenter supports the importance given to landscape connectivity in the plan. (KC)

Response: Support noted.

In an area as devoid of upland vegetation as the Duwamish, some greater emphasis on riparian habitat is important and with encouragement it will be possible to integrate this type of habitat into many of the industrial sites. (Seattle)

Response: The Trustees recognize the importance of riparian habitat and believe that our approach provides an appropriate value for riparian habitat. Not only does created riparian habitat get restoration credit based on the area of riparian habitat created, it can also provide an increase in value for associated marsh and mudflat habitats from a baseline adjusted to a fully functional value. This is discussed in detail in the additional material provided in the Supplement to the draft RP/PEIS.

The language describing the goal of the restoration effort in the draft RP/PEIS (“restore injured natural resources to baseline by helping improve the ecosystem of the Lower Duwamish River to a more acceptable condition that can support both natural resources and human use of the system”) is inadequate and high-quality, not “acceptable,” habitat is needed. (PFPS)

Response: The commenter is confusing the goal of making the LDR ecosystem better as a whole through the creation of habitat projects, with the goal of individual projects being of high quality. The restoration projects themselves will create high-quality habitat. The addition of more acreage of high-quality habitat as provided by the restoration projects will help improve the entire ecosystem of the LDR, in which very little habitat is not degraded. It is the creation of such high-quality habitat projects that will improve the functioning of the LDR ecosystem (“to a more acceptable condition”), thus restoring the injured natural resources that will benefit from this new high-quality habitat.

Clams and other shellfish are historical traditional tribal foods and should be a high priority for habitat recovery along with salmon. (DRCC)

Response: The Trustees agree that restoration of shellfish resources is important in achieving restoration in the LDR. Restoration projects implemented under the RP/PEIS will provide clean areas of intertidal and shallow subtidal sediment, which will provide good habitat for shellfish.

High priority should be given to projects that integrate habitat restoration and public access. (DRCC)

Response: The Trustees will seek to integrate public access with habitat restoration at some of the restoration projects. This will not be possible at all sites; for example, projects built by PRPs on their own property would likely not include public access. Where public access is provided, it would be designed to minimize any impact on use by natural resources. The Herring’s House restoration project, implemented by the Elliott Bay Panel, is a good example of integrating restoration projects and public access.

Habitat Valuation

Commenter concurs with the use of juvenile Chinook salmon as one of the two fish species used to assess value of habitat in the restoration effort. (WRIA 9)

Response: Support noted.

Commenters support integration of different habitats within restoration projects and giving them additional value. (DRCC) (PFPS)

Response: Support noted.

Commenter disagrees that created habitats should have the same level of ecological services as natural habitats (i.e., 1:1) because some percentage of the created habitat will fail and that the time factor in

development of habitat service provision in created habitats should be incorporated into replacement ratio requirements. (PFPS)

Response: The Trustees recognize that it is virtually inevitable that some of the created habitat will not provide all the ecological services expected, despite the Trustees' efforts in monitoring, long-term stewardship, and adaptive management. For projects implemented by PRPs as part of a settlement, we try to minimize this risk through the terms of the settlement that will require evaluation of adaptive management measures when monitoring indicates that a project's development is not matching expectations. Although some projects are likely to underperform, it is not possible to identify those projects in advance, and we do not believe it is appropriate to require more restoration from all PRPs simply because some of their projects may fail to meet predictions. Based on experience gained from other projects, the habitat most likely not to provide full function is marsh habitat, due to failure of marsh vegetation to become established. Under these circumstances, a failed intertidal marsh would instead function as mudflat (unvegetated intertidal) and would have a relative value of 0.9 instead of 1.0. The Trustees recognize that the ecological services from created habitats develop gradually as the project matures and account for this in the Habitat Equivalency Analysis (HEA) approach, which incorporates this factor in the determination of the size of that habitat needed to compensate for the injury. In this approach, restoration projects are not given full credit until they are mature.

The draft plan does not indicate that the Trustees are willing to recognize the time value of habitat by giving greater consideration to habitat created earlier as opposed to habitat that may be created 10 years later, although the Trustees have indicated this verbally, and it should be noted in the PEIS. (Seattle)

Response: The HEA method used accounts for when restoration projects are constructed, and a project built earlier will provide more restoration credits. As noted in response to another comment, additional information on HEA was added to the Supplement to the RP/PEIS, and the new material explains how timing is incorporated in the analysis.

Commenter requested that additional information on the valuation approach for restoration projects be included as an appendix to the plan. (PFPS)

Response: Extensive information on habitat valuation in the LDR was provided in Appendix D of the Supplement to the RP/PEIS.

The WRIA 9 plan discussed in the section Summary of Other Restoration Plans did state there is no scientific evidence that docks and other structures over water harm or interfere with the fish run. (M.C. Halvorsen)

Response: In contrast to this statement, the referenced WRIA 9 plan specifically identifies overwater structures as one of the "Factors of Decline" for salmonids in Table 3-1.¹ As discussed in Appendix D, the

¹ Green/Duwamish and Central Puget Sound Watershed Resource Inventory Area. 2005. *Salmon Habitat Plan: Making our Watershed Fit for a King*. Seattle. Available online at <http://www.govlink.org/watersheds/9/plan-implementation/HabitatPlan.aspx#download>.

Trustees treat areas under overwater structures as degraded, which means that removal of overwater structures, as part of a restoration project, will provide restoration credits. It also means that the amount of injury estimated for an area under an overwater structure would be less than for a similar area with exactly the same levels of contaminants that is not shaded by any overwater structures.

Please state which bird assemblages were used to assess habitat value to birds. (KC)

Response: The requested information was added to the Supplement to the draft RP/PEIS.

Please present more information on how the potential loss of natural resources in terms of fish and bird habitat were evaluated. (KC)

Response: The Trustees' authority under NRDA statutes regarding loss of habitat is limited to addressing losses caused directly by response actions (unless addressed under mitigation requirements) and by the contamination in the habitats resulting in a reduction of ecological services. Loss of habitat due to development or other factors is not within the purview of the Trustees under NRDA. However, the Trustees recognize that loss of habitat has impacted many species and the habitat restoration implemented under this plan will help address those impacts.

Coordination

Commenter supports the objective of coordinating restoration efforts with other planning and regulatory activities, to maximize habitat restoration. (KC)

Response: Support noted.

NOAA and the Duwamish Trustees should ensure a robust public involvement and review process for each NRDA restoration project under consideration. (DRCC)

Response: Although the public will have the opportunity to review and provide comments on all restoration projects, the extent to which the Trustees can involve the public in the development process for any specific restoration project will vary depending on the circumstances for that project. For example, if a PRP or group of PRPs were to propose a restoration project to the Trustees as part of settlement negotiations, the public would be able to review and comment on projects the Trustees believe are acceptable when the proposed settlement is out for public review. For projects implemented by the Trustees themselves, there would be more opportunity for public involvement during the development of the project.

Comment that local governments are identified in CERCLA and OPA as having trustee responsibilities and should be consulted in the development of restoration plans and related decisions. (KC)

Response: Under relevant NRDA statutes, including CERCLA and Oil Pollution Act (OPA), local governments do not have authority to participate as trustees in NRDA's unless so designated by the

governor of the state. The Trustees recognize that local governments have valuable knowledge, and they intend to continue seeking input from local governments throughout the restoration process.

Encourage coordination with other parties that have developed habitat plans in the Green/Duwamish watershed. (KC)

Response: The Trustees recognize the value of coordinating with others interested in habitat restoration and will continue to do so.

Industry, particularly the maritime industry, should be among those helping to identify restoration sites. (M.C. Halvorsen)

Response: The Trustees welcome suggestions from industry as well as from other interested parties for potential restoration project sites.

The Trustees should pursue opportunities to include private property of businesses who are not PRPs but whose property is adjacent to NRDA restoration sites to increase habitat size and functionality. (DRCC)

Response: The Trustees will pursue such opportunities.

Commenter questions whether the guidance for habitat laid out in the Coordination and Consultation section of the document has been determined to adequately address concerns of the federal agencies required for consultation under various federal agencies, and suggests it would promote implementation of the restoration plan if this point was clarified and the document more clearly identified requirements for individual projects regarding compliance with specific regulations or orders. (KC)

Response: This section presents a review of potentially applicable laws and regulations that may be applicable to projects. Many of the consultations and coordination are conducted as part of the process of obtaining necessary permits. Which specific requirements are applicable to any given project depends on a number of factors unique to that project, and it is not feasible to pre-identify requirements for hypothetical projects to be constructed in the future. The relevant consultations and coordination will be made for each project based on the specific details of the project.

Emphasis should be given to the goals developed by the Green-Duwamish Fish Habitat Enhancement Group/WRIA 9 Steering Committee. (DRCC)

Response: Although the goals of the Trustees extend beyond those of WRIA 9—in that additional injured natural resources besides salmonids need to be restored as part of the NRDA restoration process—we believe our efforts will help address the goals developed by WRIA 9.

Project Planning and Implementation Issues

Commenters supported integrating habitat restoration with clean-up actions where feasible; WRIA 9 requested that more specificity be included about when and how decisions about integrating clean-up with restoration will be coordinated with USEPA, the Washington Department of Ecology, and PRPs. (DRCC) (PFPS)(POS) (WRIA 9)(Seattle)

Response: Support for integration of restoration and remediation is noted; additional information regarding coordination with clean-up agencies and PRPs was added to the Supplement to the draft RP/PEIS.

Commenter indicates that the list of potential construction actions necessary for restoration is well done, but notes that excavation entails removal of fill materials, active or inactive structures, shoreline armoring, and debris, and that these materials often present unanticipated project implementation challenges. (POS)

Response: The Trustees are well aware of the challenges faced in constructing restoration projects in the LDR as a result of the restoration projects undertaken by the Elliott Bay Panel. Implementing restoration in this highly modified system is indeed challenging, and unexpected discoveries often result in increased costs and sometimes require modification of the project to accommodate these discoveries, especially if historical or culturally significant discoveries are made.

It would be useful in the section on Adaptive Management to note that future work would benefit from incorporating successful designs and techniques used in the LDR and avoiding unsuccessful past practices. (POS)

Response: This suggestion was adopted in the Supplement to the draft RP/PEIS.

The Stewardship Model section should acknowledge the need to provide temporary irrigation and control of Canada geese grazing as essential to successful establishment of riparian and marsh vegetation. (POS)

Response: This suggestion was adopted in the Supplement to the draft RP/PEIS.

It would be difficult to overstate the importance of the need for adequate source control to prevent recontamination of restoration sites. (POS)

Response: Comment noted. The Trustees agree that adequate source control is extremely important in the development of restoration projects that provide all the ecological services provided.

Commenter requested additional information supporting dimensions of restoration projects in the sections on creation of mudflat and marsh habitats, suggested the importance of uncovering relic sediment layers in former locations of marsh as a guide in planning restoration, and noted that the list of plant species in the section on riparian restoration does not include all appropriate native riparian plant species. (POS)

Response: Additional information regarding the dimension of restoration projects is included in Appendix E to the Supplement to the draft RP/PEIS. The discussion regarding habitat creation in the draft RP/PEIS was not intended to be exhaustive, but rather to provide basic information sufficient to help readers evaluate the alternatives. For any specific project, the presence of relic marsh platforms will be considered during project development, as will evaluation of other appropriate native plant species beyond those listed in the document.

Commenter suggested that emphasis be given to local business and workforce in restoration planning, implementation, and monitoring. (DRCC)

Response: The Trustees will need to follow federal, state, or tribal contracting requirements if one of the Trustees implements a project, and therefore have limited ability to follow the commenter's suggestion.

Commenter is supportive of restoration in the Duwamish, which thoughtfully co-exists with the important manufacturing and industrial base along the LDR. (Seattle)

Response: Comment noted.

Commenter supports more rigorous timelines for completion of the individual restoration plans and for the overall river-wide restoration. (DRCC)

Response: The Trustees are seeking to speed restoration of natural resources in the LDR through negotiations with PRPs for early settlement based on the Trustees' approach to estimating injuries with existing data, as discussed in the Supplement to the RP/PEIS. However, negotiations are often time-consuming and unpredictable, so setting a rigorous timeline for individual restoration projects or the overall restoration is not possible. Additionally, some PRPs may choose not to settle early, and litigation may be required in order to obtain settlements resulting in funds for restoration. So it will take many years to complete the overall river-wide NRDA restoration, despite the efforts of the Trustees to accomplish restoration as quickly as possible.

Some of the restoration plan would need to be done on private property, which cannot be taken for restoration purposes. (M.C. Halvorsen)

Response: The Trustees cannot take property for restoration, but instead will rely on property being made available by PRPs who wish to build restoration projects or provide property for others to build restoration projects, public entities that would like to see habitat restoration on their property, third parties who undertake a project for restoration banking purposes, and landowners who willingly sell property to the Trustees for restoration purposes.

The restoration process—including land acquisition, design, permitting, construction, and potential litigation—could take a decade or more, and the document should describe how the length of this process would affect the potential success of the alternatives. (KC)

Response: Although it is likely to take many years to complete NRDA restoration in the LDR, it is likely that many PRPs will want to settle with the Trustees before conducting further assessment activities and the costs associated with those activities, and so restoration will occur gradually over time. Boeing has already reached a NRDA settlement to address natural resource injuries from some of their properties and restoration actions have begun. Additional early settlements are anticipated. The most likely potential impact from a drawn-out restoration process is that land availability for restoration within HFA1 may change. If the amount of land available for restoration in HFA1 decreases, a larger proportion of restoration would need to be constructed in other HFAs under the preferred alternative or for habitat or other types of projects under the species-specific alternative. Alternatively, it is possible that additional land may be available in the future, so it is difficult to predict what impacts might result from an extended restoration process.

Priority should be given for restoration efforts that show a clear plan that the site will be able to adapt with climate change impacts. (PFPS)

Response: The Trustees share the commenter's concern about the potential for effects of climate change to impact the restoration effort, and will consider this potential in designing restoration projects.

Commenter supports giving small restoration projects more priority than is proposed, and suggests it is unnecessary in this system to give higher priority to large projects. (PFPS)

Response: When developing the valuation approach, the Trustees consulted with experts from academia and NOAA on factors that would provide higher value for restoration projects in the LDR. One of the factors identified as influencing the value of projects was size, with larger projects having more value than smaller projects with otherwise similar features. Therefore the Trustees believe that giving additional value to larger projects is appropriate. However, because there are relatively few opportunities within the LDR for large projects, many small projects will be part of the restoration effort in the LDR despite their lower value.

Commenter would like to see greater emphasis given to habitat in areas of the Duwamish where little habitat exists, suggesting a goal of having habitat sites within each of a fixed length of linear shoreline (specific length of shoreline desired is not specified in the comment). (Seattle)

Response: The Trustees recognize the value of having habitat areas throughout the length of the LDR and will try to spread restoration throughout the LDR so as to not have large gaps without habitat (existing and/or restored). We believe that all reasonable potential locations to conduct restoration in the LDR will need to be used in order to meet restoration goals. These locations include property where PRPs or third parties interested in NRDA restoration banking are willing to build restoration projects, public property made available for restoration by the Trustees or others, and property that can be purchased by the Trustees with settlement funds for restoration.

Impacts Analysis

The analysis of impacts should include a statement relating to potential greenhouse gas emissions. (POS)

Response: Comment adopted in the Supplement to the draft RP/PEIS.

Commenter believes that both action alternatives would have short-term impacts on energy and natural resources in contrast to description in the draft RP/PEIS that no impacts would be expected. (KC)

Response: The referenced section in the draft PEIS (8.2.1.3) addresses the issue of whether the alternatives would impact the **development** of energy or natural resources. The analysis of impacts expected from the action alternatives on natural resources themselves is discussed elsewhere in the document, and the potential for short-term impacts is noted. Although implementing either action alternative would use energy (fuel for construction equipment, electricity, etc.), by any reasonable standard this would be so negligible that no measurable impact to energy supplies or prices would be expected.

Commenter expresses concerns about the safety of recreational uses, such as boating and fishing, of the LDR. (M.C. Halvorsen)

Response: The LDR is already used by the public for recreation, and the creation of habitat restoration projects will not affect the safety of such activities. Instead, habitat restoration should enhance the quality of recreational uses of the LDR.

Placement of large woody debris is not feasible and would be dangerous to boats. (M.C. Halvorsen)

Response: Large woody debris has been used safely in restoration projects in the LDR. Wood can be anchored when necessary to prevent danger to navigation. All such restoration projects in the LDR require a permit from the USACE, and safety to navigation is one of the factors considered in the permit review process.

The banks of the lower 5.5 miles of the Duwamish River are made up of fill or are otherwise altered, plants will not grow there, and creation of marsh, mudflat, or riparian habitat in a working commercial waterway is impossible as it would interfere with navigation. (M.C. Halvorsen)

Response: Several successful restoration projects have been implemented within the lower 5.5 miles of the LDR. These projects have not negatively affected navigation, and projects implemented consistent with this plan will be designed so as to not interfere with navigation. These projects generally involve removal of artificial fill, pulling back and contouring the banks, and planting native vegetation.

Chinook salmon return to the Duwamish River in greater numbers than any other river in Puget Sound, Chinook salmon “like” industry, and the Trustees’ plans may reduce the amount of returning Chinook salmon; birds like the industry in the river. (M.C. Halvorsen)

Response: The Trustees disagree with the contention that industrial development and activities along the LDR benefit either Chinook salmon or birds. It is widely recognized that loss of habitat, especially within the transition zone, is a factor in the reduction of Chinook salmon populations in Puget Sound, and therefore the Trustees believe that increasing the amount of habitat within the LDR will positively affect Chinook salmon runs in the Duwamish. We believe that creation of additional habitat will similarly benefit birds. Finally, a number of habitat restoration projects have been constructed in the LDR by the Port of Seattle and others, including between Kellogg Island and Turning Basin #3.

The discussion of land and shoreline use in the draft RP/PEIS should include a discussion of impacts caused by the conversion of shoreline properties from their current designated use. (KC)

Response: Additional language has been added to this discussion that property conversion to habitat would remove land from commercial use (in addition to the existing discussion related to economic impacts in that section). As discussed in the document, the Trustees do not believe that significant amounts of property would be available for the Trustees to purchase, so the impacts of such conversion would be slight. Many projects on commercial property could be done without affecting current uses (as will be the case for the two habitat restoration projects Boeing has agreed to build in their NRDA settlement) or could be built on public property made available for habitat work.

NRDA Process, Injury Assessment Issues

Section 2.1 of the draft RP/PEIS (“Affected Environment”) would be clearer if information describing the timeline for compensatory restoration decision making is added. (POS)

Response: This section is intended to be a description of the LDR and surrounding environment as they exist today, and it would be confusing to include a discussion related to timelines for aspects of the NRDA process here. As discussed elsewhere in the response to comments, it is not possible to develop a specific timeline for restoration decisions or actions given the uncertainty of how different PRPs might decide to be involved in the process. Decisions about compensatory restoration actions will be made gradually over time as the Trustees engage with PRPs in settlement negotiations on projects to resolve their liability, obtain settlement funds in which to implement restoration ourselves, and after any litigation is concluded for non-settling PRPs.

The discussion under Restoration Goals and elsewhere confuses injured natural resources with the effects of past physical alterations, and how this relates to baseline is not clear. (POS)

Response: Changes were made in the text to help clarify that the goal of the NRDA in the LDR is to restore injuries resulting from releases of hazardous substances, not from past physical alterations of the LDR. The past physical alterations are considered as part of the baseline conditions at the site.

Under CERCLA, there is liability for clean-up of oil spills but not for natural resource damages, and this is contrary to the Equal Protection Clause of the 14th amendment. (M.C. Halvorsen)

Response: Liability for injury to natural resources resulting from oil spills is covered under OPA, and the Trustees include injuries resulting from releases of oil in our approach toward estimating injury in the LDR.

Commenter requested additional details on the injury assessment process. (PFPS)

Response: Extensive information on the injury estimation approach for early settlement in the LDR was provided in Appendix C of the Supplement to the RP/PEIS.

It would be helpful to include reference materials on economic analyses that are noted as part of the damage assessment process in Section 1.6.2 ("Injury Assessment/Restoration Planning"). (POS)

Response: Additional information regarding potential approaches for injury assessment was included in the Supplement to the RP/PEIS. However, it is important to stress that this section was included in an overview of the NRDA process in general. The HEA approach used by the Trustees to develop the estimates of injury for early settlement does not include any economic analyses. Such analyses could be conducted as part of future assessment work for those PRPs who choose not to seek settlement based on the Trustees' early settlement approach.

The interaction of groundwater with the system in the LDR has been poorly characterized to date and should be included in the evaluations. (PFPS)

Response: The Trustees are evaluating available information from the state and USEPA efforts in the LDR on groundwater as a pathway for contamination in developing our estimates of injury in our early settlement process. The Trustees may conduct investigations of groundwater in future assessment work to evaluate injury for PRPs that have not reached settlement with the Trustees as part of the early settlement process. However, the Trustees believe that the current method for estimating injury for early settlement in the LDR is the best approach to getting significant early restoration in the LDR and do not intend to conduct additional investigations of groundwater at this time.

The LDR has been extensively altered, is a commercial working waterway, and restoring conditions to the historical state is not possible; information is not available on pre-development conditions as a standard to compare with today's conditions. (M.C. Halvorsen)

Response: The Trustees believe the text makes clear that the goal of the restoration is not to attempt to restore conditions to a pre-development state and that restoration to address injured natural resources resulting from the release of hazardous substances needs to co-exist with the existing commercial activities along the LDR. Several restoration projects have been implemented by the Trustees, as well as others including the Port of Seattle, without affecting navigation. The consideration of baseline conditions in the Duwamish incorporates existing development and is not based on conditions existing prior to development.

The damage assessment process is ill-defined in Sections 1.1 and 1.2 and needs appropriate detail. (POS)

Response: The Trustees feel that the discussion of the damage assessment process (discussed in more detail in later sections of the document) is sufficient to provide the necessary background to evaluate the different alternatives for restoration. Readers who want additional information on the NRDA process can find more information in the references cited.

Commenter requests that documentation of injuries be provided and to clarify any intended difference between descriptions of injuries in the Duwamish in the subsections “Trust Natural Resources and Services” and “Need for Restoration Planning.” (KC)

Response: The basis for the Trustees’ determination that injuries have occurred is discussed in more detail in the Supplement to the RP/PEIS. As explained in the document, a full damage assessment has not been undertaken at this time, but there is evidence that injuries have occurred. Further information regarding injuries to natural resources is available in the Pre-Assessment Screen Determination (EBTC, 2009).

The description of injuries in the subsection “Trust Natural Resources and Services” provides a broad description of the injuries that have occurred and/or potentially occurred in the LDR. The description in the subsection “Need for Restoration Planning” describes the approach of using sediment contamination as the basis for estimating injury for the purpose of early settlement. The Trustees would decide which among the suite of potential injuries provided in the subsection “Trust Natural Resources and Services” would be pursued in any injury assessment for PRPs that do not choose to settle based on the early settlement approach.

The discussion on air quality should link air quality concerns from the river corridor to natural resources covered by the restoration plan. (KC)

Response: The discussion on air quality is included in the description of the affected environment, and was not intended to address potential impacts to natural resources due to air quality issues. At this time the Trustees have not tried to evaluate potential impacts to natural resources from air pollution, and have focused instead on impacts related to contaminated sediments.

Monitoring and Stewardship

Commenter encourages specific metrics for measuring salmon, wildlife, and habitat recovery so we will know when natural resource services are recovered. (DRCC)

Response: The Trustees will monitor the performance of the habitat created at each project in order to ensure that the habitats are providing the ecological services expected. However, it is not feasible to try to monitor salmon or other wildlife populations as a metric for performance of individual NRDA restoration projects or for the NRDA restoration projects as a whole. Using salmon as an example, it would require an enormous effort over many years to try to identify the effect that a restoration project or group of projects is having on salmon populations because there are so many other critical factors for salmon, including ocean conditions, quantity and timing of river flows, harvest, etc.

Commenters supported requiring long-term stewardship as part of every project and one suggested that programs being developed by the Commencement Bay Trustees and the Elliott Bay/Duwamish Restoration Program could serve as models. (KC) (DRCC) (PFPS)(WRIA 9)

Response: The Trustees will require that long-term stewardship be a component of every project and will look to those stewardship programs as potential models. Although the exact mechanism for performing long-term stewardship may differ depending on the circumstances of individual projects, the Trustees recognize that long-term stewardship is necessary for restoration projects to achieve their goals.

Commenter suggested that whoever is doing the environmental monitoring of restoration projects would be prejudiced, and that more than one person and industry should be present. (M.C. Halvorsen)

Response: Monitoring of projects will be done by environmental firms with appropriate qualifications to undertake this work. In the case of PRP-implemented projects, the PRP could choose the environmental firm with Trustee concurrence.

Conditions change so protection of habitat restoration projects in perpetuity should be changed to “as long as these conditions remain.” (M.C. Halvorsen)

Response: The Trustees recognize that conditions change and that some of the restored habitats may be affected. However, ecological services will still be provided by habitats as they adjust to changing conditions and adaptive management actions can be performed to mitigate such change; therefore, habitat restoration projects should be protected in perpetuity.

Requests for Clarification and Additional Information

Commenter requests an explanation of whether the intent of the plan is to include the Harbor Island and Lockheed West Superfund sites in addition to the Lower Duwamish Waterway Superfund site, and asks if the Lockheed West site is included whether the plan should include the affected portion of Elliott Bay. (POS)

Response: The Trustees are approaching the LDR as a single “site” for the purpose of NRDA restoration planning, and all injuries resulting from releases of hazardous substances into the LDR—wherever they originate—are included in this planning effort. As part of the estimation of injury, the area under consideration for injury assessment includes the near shoreline area of Elliott Bay fronting the Lockheed West and Harbor Island Superfund sites.

Commenter noted that the plan indicates that the Harbor Island site is included for the purpose of covering compensatory mitigation, but wanted clarification as to whether this includes the East Waterway Operable Unit. (Seattle)

Response: As noted previously, the Trustees are evaluating injuries in the entire LDR, which includes the East Waterway Operable Unit.

Services provided by natural resources are discussed but not defined clearly. (POS)

Response: A definition for the services provided by natural resources—“ecological services”—was added to the Supplement to the RP/PEIS.

The discussion about primary and compensatory restoration does not clearly distinguish them, particularly regarding implementation of “timely and efficient remedial restoration actions.” (POS)

Response: Additional discussion was added in the Supplement to the draft RP/PEIS on primary restoration. Information regarding the HEA approach, and how the timing of remedial actions is factored in the determination of compensatory restoration requirements, was also added to this Supplement.

Commenter suggested specific additional references be included regarding water quality, fish species, contamination, and progress on remediation. (KC)

Response: The requested references were added to the Supplement to the RP/PEIS.

Commenter requested more information on the types of risk faced by the resources listed in the document; for example, habitat loss and impacts to food resources. (KC)

Response: The RP/PEIS addresses restoration for injuries to natural resources resulting from releases of hazardous substances. Other risks are not within the purview of the Trustees under NRDA statutes. However, the restoration actions taken under this plan will help address impacts to resources from habitat loss, by creation of new habitat which will increase the availability food resources.

The document does not provide enough detail to fully assess the species-specific restoration alternative and the PEIS from Commencement Bay which discusses this, and other alternatives should be added as an appendix. (KC)

Response: Additional information was provided in the Supplement to the draft RP/PEIS rather than adding the Commencement Bay PEIS as an Appendix. It is difficult to be specific about potential species-specific restoration projects because the approach taken by the Trustees to estimate injury for settlement purposes is based on lost services from habitats and not on direct injury to various species. The types of projects that could be included in a species-specific restoration approach are described generally, as injuries to individual species have not been quantified at this time.

Commenter requested more information related to the injuries in the LDR in order to better evaluate the preferred alternative and the nexus between the restoration and the injuries. (KC)

Response: The Trustees have not conducted a formal damage assessment at this time, so it is not possible to provide detailed information concerning impacts to species in the LDR. A description of the types of resources that were potentially injured is provided in the document. Information on how injury has been estimated for the purpose of early settlement was added in Appendix C and on how habitat restoration is valued was added in Appendix D in the Supplement to the RP/PEIS. The approach used is based on a “lost ecological services” approach due to contaminated sediments, and not on estimating injury to

individual species. The Trustees believe that the approach toward restoring injuries can be evaluated without having conducted a damage assessment and fully quantified injuries. However, further information regarding injuries to natural resources is available in the Pre-Assessment Screen Determination, available online at:
http://www.darrp.noaa.gov/northwest/lowerduwamishriver/pdf/Final_Pre-Assessment_Screen_for_the_Lower_Duwamish_River_Elliot_Bay_Trustee_Council,_December_2,_2009.pdf

There is no mention of the cfs that were diverted to Lake Washington or Lake Union in the Section on Biological Resources (Section 2.3 of first draft). (M.C. Halvorsen)

Response: The modifications of the Duwamish River are discussed in Section 3.2 of the RP/PEIS, and the Trustees believe that this discussion is sufficient to inform the reader.

Interstate shipping commerce generates 70,000 jobs for the Seattle area and this is not mentioned in the plan. (M.C. Halvorsen)

Response: A 2009 estimate from the Port of Seattle that the seaport generates 56,000 jobs was added to the Supplement to the RP/PEIS.

Commenter requests additional information on injuries such as recreational services or non-consumptive uses. (KC)

Response: The consumption advisory for resident fish in the LDR is a recreational service loss that results from releases of hazardous substances in the LDR. Non-consumptive uses are described in the subsection “Alternate Methods for Injury Assessment” in the Supplement to the RP/PEIS. A more detailed description of injuries is provided in the Pre-Assessment Screen for the LDR.

Commenters requested additional information regarding restoration projects at the mouths of tributaries to HFA1. (KC) (POS)

Response: Restoration projects located near the mouths of tributaries in HFA1 are expected to provide similar benefits to the injured natural resources as projects located along the LDR itself. The extent to which projects can extend up into the tributaries will depend on the specific details of the project, since fewer of the injured resources would benefit directly as a project extends up into the tributary. The project would need to benefit aquatic habitat used by injured natural resources.

Commenter requests that information be provided about the number of projects identified in the 1994 EBD RP concept document and those specifically in the LDR. (KC)

Response: This information was added to the final document.

Commenter requested that additional information be included on baseline water quality contamination levels, source control, and bank stability. (USEPA)

Response: The Trustees believe that the level of detail provided in the RP/PEIS is sufficient to provide a background to review the alternatives and have provided references (incorporated by reference) where additional information can be found.

Clarify if the term “wetland” in Section 2.1.3, page 13 of the draft RP/PEIS refers to emergent plants and marsh. (POS)

Response: The reference to wetlands was meant to refer to marsh in this section.

Commenter requested clarification about language related to increased sediment and pollution inputs from riparian and marsh habitats. (KC)

Response: The final document clarifies that the loss of riparian and marsh habitats increases sediment and pollution inputs due to reduction in filtration and other attributes of these habitats.

Editorial Comments

The first sentence in Section 1.8.2 does not reflect present environmental decision-making and overstates the ability to alter aquatic area resources without directly linked compensatory mitigation actions. (POS)

Response: The sentence was rewritten in the Supplement to the RP/PEIS to more clearly identify that the loss of habitat that has occurred is significant, and that the Trustees’ proposed approach will help address the lack of habitat.

Section 2.0 (“Environmental Setting/Affected Environment”) and subsections of the draft RP/PEIS could be improved. (POS)

Response: A number of modifications were made in response to suggestions to improve this section in the Supplement to the RP/PEIS (Section 3.0).

The abstract does not adequately convey the specifics of this plan and is too generic. (PFPS)

Response: The abstract was rewritten and details were added to the Supplement to the RP/PEIS.

The discussion of the role of sediment contamination in the Trustees’ injury estimation process does not belong in the section on “Need for Restoration Planning” and should be relocated to a section discussing injury assessment. (KC)

Response: This recommendation was adopted in the Supplement to the draft RP/PEIS.

Commenter recommends adding a subsection on sediment quality in addition to the subsections on air quality, water quality, and climate change. (KC)

Response: Requested subsection was added to the Supplement to the RP/PEIS.

Commenter suggests using the term “rock revetments” instead of “rock breakwaters” and moving the last sentence in the second paragraph in the subsection “Physical Environment.” (KC)

Response: Comments adopted.

The Executive Summary would be improved if additional details were included. (POS)

Response: Additional detail was added to the Executive Summary in the Supplement to the RP/PEIS.

Commenter suggested that the EIS provide details about the communities affected by past contamination and industrial activities and how their concerns are being addressed. (USEPA)

Response: The Trustees believe that a more detailed discussion of how past industrial activities have affected local communities is not necessary for assessing the impacts of the restoration alternatives, and they direct those interested in these details to the USEPA website for the Lower Duwamish Superfund Site. The Trustees have held public meetings in the local area to facilitate public participation by the affected community in the process, and are prioritizing restoration within the LDR (HFA1) as part of the restoration effort. The Trustees believe this not only is best for restoring natural resources injured by the releases of hazardous substances, but it is also consistent with our understanding of the desire of the community to do restoration within the affected area.

Actual Comments from the Public from 2009

To: Rebecca Huff, NOAA

From: M. C. Halverson

Subj: Draft Lower Duwamish River Restoration Plan

Date: June 19, 2009

Fax: 206-526-6665

10002 Aurora Ave. N., #5546
Seattle, WA 98133
June 19, 2009

Roberta Hoff, NOAA
NOAA Damage Assessment and Restoration Center NW
7600 Sand Point Way N.E., Building 1
Seattle, WA 98115

Re: Draft Lower Duwamish River
Restoration Plan

Dear Roberta Hoff:

It was good to talk with you by telephone yesterday afternoon. As promised I am sending you my comments regarding the above-referenced plan. I will comment generally first and then specifically with reference to specific pages and specific sections. As I told you, I am concerned with the 5.5 miles from the north tip of Harbor Island to Turning Basin 3 (and boats still turn around in Turning Basin 3) as that is a working, industrial, commercial, federal waterway and is not acknowledged as such in the Plan.

Because that area has had more alteration than the other areas included in the plan, the industrial, commercial waterway should be treated separately. Instead NOAA has designated HFA 1 as extending up to the North Wind Weir, a distance of 7 miles. The last mile and a half were never straightened and should more properly be included with HFA 3. The Plan is very fuzzy that indeed the first 5.5 miles is a working industrial commercial waterway; that the banks of that stretch are fill and trying to plant anything there is like trying to grow flowers in cement. The bank cannot be removed because that would cause the river to return to its winding channel thereby wiping out the industrial, commercial area, which incidentally generates 70,000 jobs. This is unconstitutional as it would interfere with the commerce clause of the U.S. Constitution. It should be explicitly stated that the industrial, commercial waterway has certain alterations that cannot be undone.

In two cases dealing with commercial waterways, *United States v. Chandler-Dunbar Water Power Co.* 229 U.S. 53, 33 S.Ct. 667, 57 L.Ed 1063 (1913) and *United States v. River Rogue Improvement Co.*, 269 U.S. 411, 46 S.Ct 144, 70 L.ed 339 (1923), the United States Supreme Court, the final arbiter of what the law is in the United States, declared that the primary purpose of a commercial waterway is navigation. It is not fish. There are many more cases dealing in general with navigable bodies of water that state the same thing. The Court has been consistent on this issue all the way down to 2003. I haven't checked past that year and it may be to the present time.

The Chinook return in greater numbers to the Duwamish River than any other rivers in Puget Sound, a fact never mentioned in NOAA's plan. Maybe what the other rivers need is a little industry. The Chinook certainly like it. NOAA plans to change the river. What effect will this have on the Chinook? NOAA and everyone else just assumes the Chinook will adapt. That is an assumption, not science. It could very well be that the Chinook don't like the changes and won't return. If that happens and NOAA ruins the Chinook run, then more harm than good has been done.

Specifically, I have the following comments:

1.7 Goals. P.7, para. 1: Restoring to historical (pre 1911s) conditions is not possible in the first 5.5 miles of the Duwamish Commercial Waterway because it has undergone such a high level of alteration and and they should be clearly stated.

1.8 Need for Restoration Planning. P.8-9, para. 4 on P.8 and para. 1 on P. 9. It is ignored that 5.5 miles of the river is a commercial industrial waterway and cannot be accomplished here. Again, this reads as if that area is just a country stream.

1..8.1 Purpose of Restoration Planning. P 10 in Perpetuity. Conditions change. Perpetuity should be changed to as long as these conditions remain.

2.2 Physical Environment. P. 14, para. 3: The Duwamish River, as were other rivers throughout the country, straightened between 1911-1916 to be a commercial, industrial waterway and it still is in the first 5.5 miles from the north tip of Harbor Island to Turning Basin 3. The banks are fill, not dirt and nothing will grow in them.

2.3 Biological Resources. P.15, para. 1: In discussing the cfs, there is no mention that some of the original cfs were diverted to Lake Washington or Lake Union. This is not really a complete picture.

Birds. P.16, para. 2: Kellogg Island, near Harbor Island, close to the mouth of the Duwamish, is a nature preserve. The next bird area is upland at Turning Basin 3 at Hamm Creek, 5.5 miles distant. Like the Chinook, the birds like the industry in the river. Anyone reading this would never know that an industrial area existed.

Chinook Salmon. P. 17, both paras: See my general comments, P. 1, para. 4. See the legal definition of what is the primary purpose of a commercial waterway.

2.4 Socioeconomic/Cultural Resources. P. 20, para. 20. The interstate shipping commerce in the Duwamish Commercial Waterway generates 70,000 jobs for the Seattle area. There is no mention of that in this plan and in any paragraph much less this one. I consider the failure to include the maritime industry when listing the jobs in King County as downright underhanded and misleading.

3.2 Public Participation. I have a summer place in B.C., Canada and usually leave for the property in April and return in October. Consequently, I never know of these meetings. The only meeting I heard of and attended was one where NOAA stated, very vindictively, that NOAA was going to punish polluters again after EPA already punished them once for polluting. It sounded like double jeopardy, which is unconstitutional as it violates the 5th amendment to the U.S. Constitution. However, since neither I nor members of my family were polluters, I did not pay further attention to NOAA. Nothing was said about a restoration plan, for if it had been mentioned, I would have paid close attention. Further, I did not subscribe to the Seattle Times. I preferred the now defunct Post-Intelligencer. I am here this year because I hurt my back and am undergoing physical therapy.

4.2 Responsible Party Liability. P. 26, para. 1: CERCLA 42 U.S.C. 9601 et seq. holds oil spills liable only for cleanup and exempts them from natural resource responsibility. (I know because I spent 50 hours in the University of Washington Law Library studying that law.) To me, it violates the Equal Protection clause of the 14th amendment to the U.S. Constitution because oil companies are more equal than the rest of us.

5.1 Description of Preferred Alternative. P.27, line 6: Creation of marshes and mudflats in a working industrial, commercial waterway such as the first 5.5 miles of the Duwamish from the north tip of Harbor Island to Turning Basin 3 is impossible as it would interfere with navigation. It is ludicrous to pretend that such things can be done.

5.2 Restoration of Injured Natural Resources and Services. P. 27. When the 5.5 miles of the Duwamish River was straightened between 1911-1916, fill was placed to create the banks. No assessment to natural resources occurred; thus there is no standard to compare today's existing situation with what was there in 1916. Any comparison would be complete guesswork.

5.3 Key Duwamish Habitats. P. 27 and 28: It is impossible to restore marshes, intertidal mudflats, and shallow subtidal in a working industrial, commercial waterway. I wonder if someone is fantasizing. This is ridiculous. As to riparian habitat, the land in question is private property and cannot be taken for buffers. Riparian Habitat. P.28, para. 4: The property beyond mean high water is privately owned. NOAA cannot take property for the proposed purposes without paying just compensation. Again, this is another hopeless proposal.

5.5 Restoration Process and Objectives. P. 29, last para.: Generally stated these objective sound fine. The problem is it won't work in a working, commercial industrial waterway. I don't like to sound like a broken record but I reiterate: the primary purpose of a commercial waterway is navigation. It isn't fish. Interfering with navigation is unconstitutional and violates U.S. Supreme Court rulings. The banks are fill, 10 ft. deep and trying to grow anything there is like trying to grow flowers in cement.

There is no recognition in this plan that the Chinook return in greater numbers to the Duwamish River than any other river in Puget Sound. See my general remarks, paragraph 4.

In this 5.5 miles, only Hamm Creek is a tributary and enters the Duwamish just south of Turning Basin³, where boats still turn around. I was unaware that hazardous substances were released south of Turning Basin 3. All of the property in the 5.5 miles is used. It is not vacant land. Exactly where does NOAA plan to have permanently wetted areas at appropriate elevations? Incidentally, Mean High Water is 8 feet, not 13.

5.6 Habitat Focus Areas, HFA 1. P. 31, last para., P. 32-33, all: I object to including past 5.5 miles as that has a different history with different effects. The proposed plan for the Lower Duwamish River first surfaced 10 years ago and was discarded as unworkable. The scientists told us that the banks of the river are fill and nothing will grow with them; that there are exactly 7 "spots", some on private property, that do have dirt but that they are not connected. What is planted in the banks will die. The dead material would accumulate on the bed of the river, which would be excessive, which in turn would cause the algae to grow which in turn would suck the oxygen out of the river. This plan will surely kill the river. This is the third time this plan has been dredged up and I cannot for the life of me understand why.

HFA 1 The Lower Duwamish River. P.31, last para. and continues to P.32 Again, this designation including the 5.5 miles of the industrial, commercial waterway of the Duwamish River and extending it another mile and a half is unnatural. The areas have different histories and different characteristics. It is like comparing apples and oranges. The commercial, industrial 5.5 miles of the Duwamish River should be considered separately and the other area should be placed with HFA 3. I don't know if this designation is to camouflage what is being planned but I suspect it is. Obviously, in a commercial waterway weirs cannot exist as ships and boats cannot navigate around them.

HFA 2 Inner Elliott Bay Shoreline. P.32: Again, much of this property is privately owned. The harbor is a busy harbor, not just Port shipping but privately owned interstate vessels, ferries, sightseeing boats and recreational boats. I do not see how this could possibly work.

HFA 3 and HFA 4 The Duwamish River Reach and The Green River Reach, respectively, P.32: These areas are not commercialized as the first two areas but much of that land is privately owned and the property owners have riparian rights. NOAA cannot go upon private land without just compensation and cannot abolish anyone's rights, which is what NOAA would be doing.

6. RESTORATION TYPES. 5 Locations in the River P. 35, last para., P. 36, para. 1,2, 3: It is totally ludicrous to try to restore the Lower Duwamish River, a working industrial, commercial waterway to its historical habitat condition, and talking about marshes and mudflats therein is ridiculous.

6. Landscape connectivity. P.36, last para.: In the commercial waterway off-channels and side channels are used by boats to navigate the channel. Any interference with navigation is unconstitutional. I cannot understand why anyone at the Seattle Office of NOAA would seriously propose this. It is totally not feasible and downright ridiculous.

6.1 Desired Types of Restoration. P.37, last para.: Again marshes and mudflats in the industrial, commercial waterway cannot be achieved. This is not a country stream. Furthermore, these plans would interfere with riparian rights of upland owners. Riparian rights, the free use of water in rivers, lakes and streams by the upland owner, can be traced to the Middle Ages. They came to this country from England and are in all 50 states. NOAA cannot abolish rights as that is unconstitutional.

6.1.1 Creation of intertidal Mudflats and 6.1.2 Creation of Marsh. P. 38: my comments are the same as for 6.1. I begin to wonder if people are hallucinating.

P.39, last para.: The placement of large woody debris is not only not feasible but also dangerous to boats. Such debris could become entwined in the propellers of boats and damage them. This is another silly idea.

6.1.3 Creation of Riparian Habitat. P.40, para. 1,2,3: This gives a false picture of where riparian habitats occur. Kellogg Island, near Harbor Island, at the north tip of Harbor Island, is a nature preserve. For 5.5 miles up to Turning Basin 3 there is very little habitat. This is the highly industrialized, commercial waterway whose upland is privately owned and this is where the banks of the river are fill. It is a fantasy to talk of planting Willows, Sitka Spruce, Hemlocks, Douglas Firs, Salal and Oregon grapes. Nothing will grow in the 10' fill. As it is privately owned, NOAA cannot go upon the private property. Mean High Water in the Duwamish River, according to the line drawn up by the Coast and Geodetic Survey, is 8'.

Paras. 2 and 3 are fantasies also. When the Washington State Derelict Vessel Department informed us that this was the lowest priority with them and it would take years to get to them, Boyer Towing, Inc., an adjacent property owner, in front of whose property there is no pollution, decided to obtain the necessary permits and remove the derelict vessels at their own expense. Removal can only be done at certain times of the year because of the Chinook run.

In the lower Duwamish River, Hamm Creek is the only Creek in that 5.5 mile stretch of the river and it has already been reconnected.

Planting on adjacent lands on private property is the taking of property without due process of law.

6.2 Types of Restoration Not Desired. P.41, whole para.: This whole plan for the 5.5 mile stretch of the Lower Duwamish River is a type not desired. It won't work. As I said I spent 50 hours in the University of Washington Law Library studying CERCLA. It does not give NOAA or anyone else the right to destroy the interstate commerce industry in the name of making the public and environment whole again (which cannot be accomplished with this plan). This proposed plan for the Lower Duwamish River is totally misleading, unrealistic and unobtainable.

6.3 Restoration Project Monitoring and Performance Criteria. 6.3.1 Performance Criteria. P.42: This is too vague to comment on.

6.3.2 Adaptive Management. P. 42: This is too vague to comment on.

6.3.3 Monitoring Parameters. P.43, whole section: I agree monitoring should take place for 10 years but I would be concerned that whoever is doing the monitoring would be prejudiced. Therefore, it should be

more than one person and industry should be present or even be a member of the persons doing the monitoring in the Lower Duwamish River.

6.4 Stewardship Model. P.44, whole section: There is no way that the Lower Duwamish River can be restored to its 1911 condition. Instead a new plan, focusing on the 5.5 miles comprising the working industrial, commercial waterway separately, that realistically evaluates what can be done without interfering with interstate commerce and private property owners' rights should be undertaken.

7. PROJECT SELECTION. 7.1 Summary of Other Restoration Plans. P.45, last para.: WRIA 9 was very general but did state there is no scientific evidence that docks and other structures over the water harm or interfere with the fish run.

The Port of Seattle's Plan, having been discarded 10 years ago and dredged up this year, was not adopted. It was sent back for further scientific scrutiny. I know it won't stand up to such scrutiny because 10 years ago the scientists told us it wouldn't. However, with all these flawed plans out there, there is no need for another restoration plan.

Duwamish Valley Vision Map is another fantasy.

7.2 Selection Criteria. P.46: The Lower Duwamish River(5.5 miles) is not included with those identifying the sites. Industry should particularly include representatives from the maritime industry.

Tier 1 Screening. P.45: Again, a new plan should be drawn up realistically assessing the Lower Duwamish River as it is today and realistic standards should be based on that.

Future Management. P.47: Under no circumstances would I agree to a conservation easement on my properties. One is in the industrial, commercial waterway and I lease to a man who operates a marina there. The other is residential and when I replaced my bulkhead I was asked to plant native species. I did. They died. The banks are full. It was a waste of money.

Examples of Restoration Projects from Previous Settlements. Appendix C sites Kellogg Island, near the mouth of the Duwamish River and Turning Basin 3. There are none in the 5.5 mile industrial, commercial waterways which separates these two sites.

8. Restoration Alternative Analysis. P.49, para.3: The point that is lost on NOAA is that the damages done by releases of hazardous substances cannot be determined since no assessment of the damages done to natural resources was undertaken as a result of the 1911-1916 straightening. We cannot go back to 1911 which is what this proposal for the lower Duwamish River is. It is completely unrealistic.

8.1 Analysis of the Alternatives for the Purposes of Restoration. 8.1.1. P. 50: The problem here is that it seems that the point is lost on NOAA that it is impossible to return to 1911; that no assessment was taken in 1916 as to what would constitute a baseline for natural resources; and that it is not still occurring. I have owned property on the Duwamish River since 1967 and the river is cleaner now than it was then precisely because people have been stopped from dumping anything they please in the river. CERCLA provides for the restoration of natural resources and services that were injured or lost as a result of the release of hazardous substances. It does not provide for restoration of natural resources and services lost by the straightening of the river. Herein is the fallacy of this plan.

The rest of section 8 to 8.2 is meaningless for the Lower Duwamish River. I cannot comment on other areas.

8.2.1.2 Economic Impacts. P. 55: The economic impact on the 5.5 miles of the working commercial, industrial Duwamish Commercial waterway would be catastrophic as it would destroy the interstate commercial shipping.

8.2.1.5 Recreation and Education. P. 56: The banks of the Lower Duwamish River are full, 10 feet deep. There is no way NOAA could remove hard armoring without the river reverting to its original winding course thereby destroying the industrial, commercial industry that incidentally provides 70,000 jobs. Kayaking and boating may not be desirable in such a busy waterway. Homeland Security and the Coast Guard do not want such activity because it isn't safe around ships, tugs and large barges. It is not possible to have any more parks in the 5.5 mile area that comprises the working industrial, commercial waterway. Parks in an industrial area are used by prostitutes, drug dealers and transients. The Police Department cannot patrol them and the Fire Department is adamantly opposed to them. This particular paragraph reads like something out of Alice-in-Wonderland where people pretend the working industrial, commercial waterway is just a country stream.

8.2.1.6 Land and Shoreline. P 56: This is private property and cannot be used the way NOAA proposes.

8.2.1.8 Wetlands. P.57: There is no way to have wetlands in the 5.5 miles of the working industrial, commercial Lower Duwamish River.

8.2.2.3 Floorplain and Floor Control . P.58: Off-channels in the Lower Duwamish River are used by ships, tugs and barges to reach the channel. It is not possible for NOAA to place off-channel habitat there as it would interfere with navigation, which is unconstitutional.

8.2.3 Unique Characteristics of the Geographic Area in Which the Alternatives Would be implemented [40 CFR 1508.27 (B) (3)]. P.58, last para.: The Chinook salmon return in greater numbers to the Duwamish River than any other river in Puget Sound. Maybe what the other rivers need is a little industry. The Chinook certainly like it. However, it is obvious the Chinook like the river the way it is. NOAA proposes to change the river. What fish biologist did you talk to who told NOAA it would not hurt the Chinook, possibly destroying the run altogether? Assuming that the fish will adjust is an assumption/ not science.

Ten years ago, when a plan for the 5.5 miles of the Lower Duwamish River first surfaced, very similar to the plan NOAA is putting forth here, scientists told us it would not work. The banks of the river are full and nothing will grow in them. It is like trying to grow flowers in cement. Therefore, the plantings will die, causing excess dead material on the riverbed, causing in turn the algae to grow, causing in further turn for the oxygen to be sucked out of the river. That would surely kill every living thing in the river and do more harm than good.

I have no way of knowing if the environmentalists do not know of this scientific evidence; whether the environmentalists cannot admit of this scientific evidence; or whether they think no one will remember ten years ago.

In addition, this plan is unconstitutional as it would abolish the riparian rights of the upland owners and would ignore the rulings of the U.S. Supreme that navigation is the primary purpose of a commercial waterway.

8.2.4 Controversial Aspects of the Alternates. P.59: It is highly controversial in the 5.5 miles that comprise the working industrial, commercial waterway as it would completely destroy the industrial shipping industry. Unfortunately, no one cares about the 70,000 job loss generated by that industry or the resultant tax loss in addition to the job loss.

- 8.2.6 Precedential Effect of the Alternatives. P.59: This paragraph totally ignores the character of the 5.5 miles comprising the working industrial, commercial waterway and pretends NOAA is dealing with a county stream. It is totally unrealistic.

I am not commenting on the plans on pages 60-64 as I do not know how it would affect the areas other than the Lower Duwamish River. It will not work in the 5.5 miles of the working industrial, commercial Duwamish River. My only other observation is that Elliott Bay is a very busy harbor and I have serious doubts that it will work there either. However, I have not studied Elliott Bay and just pass my observation along.

9. COORDINATION AND CONSULTATION, Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), etc. P. 65: As I said before, I spent 50 hours in the University of Washington Law Library studying 42 USC 9601 et seq., and I am very familiar with it. Damage to natural resources is specifically for damage caused by the dumping of hazardous material. The Duwamish Waterway was straightened between 1911-1916. In 1916 no assessment was done to determine what natural resources suffered damage. There is no way to return to 1911; thus baseline conditions must be as of 1916. NOAA has no standard against which to measure what damage was done by the hazardous materials subsequently dumped in the river. The 5.5 mile work industrial, commercial waterway should be treated separately because only that area was straightened and has different factors affecting it.

Oil pollution Act of 1990 (OPA) 33 USC No. 2701 et seq. P. 65: This act is later than CERCLA but the two laws say different things. CERCLA holds the oil companies responsible for the oil spill only for the cleanup and specifically exempts them from natural resources damage..

Rivers and Harbors Act, 33 USC 401 et seq., P.66: I am familiar with this act as I had occasion to read it in 2005. I am delighted to see that NOAA acknowledges the prohibition of unauthorized obstruction or alteration of navigable waters. This proposed plan, insofar as the 5.5 mile working industrial commercial Duwamish Waterway would do just that. Therefore, NOAA is prohibited from breaking the law.

Magnuson-Stevens Act (MSA)...16 USC No. 1801 et seq., 50 CFR Part 600. P.67: This act did not say that fisheries is the most important industry and that all other industries are subservient to it. Indeed, it could not do so. Where the U.S. Supreme Court had ruled that navigation is the primary purpose of a commercial Waterway, Congress cannot overturn that body.

Executive Order 11988 Floodplain Management. P. 67: This really does not pertain to commercial, industrial waterways.

Executive Order 11990 Protection of Wetlands. P.68: This is in regard to new wetlands. It does not give NOAA the right to interfere with navigation in rivers.

Executive Order 12898 Environmental Justice, as amended. P. 68: This is not applicable to an industrial, commercial waterway as the first 5.5 miles of the Duwamish River are.

Executive Order 11514 (35 Fed. Reg. 4247) – Protection and Enhancement of Environmental Quality. P 68 I cannot see that Order gives NOAA the right to interfere with navigation in navigable bodies of water; nor the right to take private property for whatever purposes; nor the right to rearrange a commercial waterway, all of which this plan would do.

Executive Order 12962 (^) Fed. Reg. 30, 769) – Recreational Fisheries. P. 69: This Order does not give NOAA the right to develop recreational fisheries along a busy working industrial, commercial waterway

such as the Duwamish Commercial Waterway. No one seems concerned with safety. Such fisheries would not be safe the recreational users nor for those engaged in interstate commercial shipping. I have no objection to recreational fisheries as long as they are not in an industrial area.

10. REFERENCES

Blomberg, G., C. Simenstad, and P. Hickey. Changes in Duwamish River Estuary Habitat Over the Past 15 Years. P.71: George Blomberg, a Port of Seattle employee, is an environmentalist, not a fish biologist. He has an agenda of his own and needs to be taken with a grain of salt.

Duwamish River Cleanup Coalition. Duwamish Valley Vision Map and Report, 2009. P. 71: This is a fantasy.

Port of Seattle, Lower River Habitat Restoration Plan: An Inventory of Port of Seattle Properties, by AHBL, Seaport Planning Group. January 13, 2009. I am not familiar with this document. I do know that the Port of Seattle, Lower River Restoration Plan itself was not adopted by the Commissioners of the Port of Seattle but was referred to further scientific scrutiny.

In general, many references pertain to pre-establishment of the straightening of the river and are not applicable to the Lower Duwamish River as a basis of restoration. No reference pertains to the straightening of the river itself and the creation of the working industrial, commercial waterway that became the Duwamish Commercial Waterway. I find them slanted leading to bias.

11. Glossary. P.79

Baseline Condition. P.79: I could not find this in any dictionary that I looked in, so I am assuming NNOAA is creating a new condition. However, it is not clear which year NOAA is using. Indeed, different parts of Puget Sound have different years. At least you know a Baseline is a measuring.

Primary Restoration. P. 81: I disagree with your interpretation of CERCLA.

Appendix C Examples of Restoration Projects Completed from Earlier NRDA Settlements. Turning Basin 3. P. 95: Boats still turn around in Turning Basin 3. It is afterall still a part of the working industrial commercial waterway that is know as the Duwamish Commercial Waterway.

My conclusions are as follows:

1. The proposed plan, as regards the Lower Duwamish River, will not work and should be discarded.
2. The 5.5 mile working industrial, commercial Duwamish Waterway should be a separate unit that is studied separately. South of Turning Basin 3 to the North Wind Weir should be included in HFA 3.
3. A new plan should be formulated for the Duwamish Commercial Waterway establishing that it is a working industrial, commercial waterway and stating that restoration is limited. The extent of damage from pollution cannot be determined because the River was straightened and no evaluation was undertaken to determine damage from the straightening, thus no basis exists from which to compare present day damage.

Thank you for your attention to this matter.

Letter to Roberta Hoff, NOAA
Dated June 19, 2009
Page 9

Very truly yours,


M. C. Halvorsen

cc: Patricia Montanio, NOAA
Dir. Eduardo Ribas, NOAA
Acting Chmn, FMC
Senator Patty Murray
Senator Maria Cantwell
Representative Jay Inslee
Ken Brunner, ACOE
Matt Longgenbaugh, National Marine Services
Boyer Towing, Inc.
Pacific Pile and Marine
Delta Marine
Port of Seattle Commissioners
Port of Seattle CEO
Hal Hurlen
Lisa De Alva



King County

Department of Natural Resources and Parks
King Street Center, KSC-NR-0500
201 South Jackson Street
Seattle, WA 98104-3855

July 28, 2009

Rebecca Hoff
NOAA Office of Response and Restoration
7600 Sand Point Way N.E.
Seattle, WA 98115

Dear Ms. Hoff:

Thank you for the opportunity to submit comments on the Draft Lower Duwamish River Natural Resource Damage Assessment (NRDA) Programmatic Restoration Plan and Programmatic Environmental Impact Statement (RP/PEIS). King County's Wastewater Treatment Division and Water and Land Resources Division offer the following comments.

General Comments

- 1) We support the general approach laid out in the draft restoration plan identifying the basic types of all-purpose habitat that should be developed to help facilitate the development of future projects. By targeting the restoration or enhancement of ecosystem functions typical to the system, the likelihood of developing sustainable habitat is increased. We feel this is a sound approach to removing barriers for parties that have some liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Oil Pollution Act of 1990 (OPA).
- 2) We encourage coordination with the other existing entities that have developed habitat plans in the Green/Duwamish watershed, listed in Section 7, to take advantage of the prioritization work already accomplished. A process to ensure that parties pursuing individual projects work with these entities should help maximize their habitat value.
- 3) Other NRDA work conducted by the Trustees referred to in this document is often central to positions stated and conclusions drawn. Without the ability to see these documents, which are only available for review at the National Oceanic and Atmospheric Administration (NOAA), it is difficult to determine if the statements made are appropriate and the conclusions drawn acceptable. At a minimum, the relevant documents should be clearly referenced in the document so that reviewers have some idea what material is the basis for statements presented. It is preferred that relevant materials be included as appendices to the Programmatic Environmental Impact Statement (PEIS) so that reviewers have access to all relevant material for their review. Specifically, the lack of adequate documentation creates the following problems:
 - The preferred restoration alternative is difficult to evaluate without understanding more about the species that are injured and the degree of injury. It would be helpful to have more information on the types of injuries NOAA determined has occurred. For example, are there injuries to species' habitat, food resources or directly to the species of concern?

- It was difficult to assess Alternative 2 (Species-specific) versus Alternative 3 (Integrated Habitat) because of the lack of information presented for Alternative 2. The report refers the reader to the Commencement Bay PEIS for various aspects of the evaluation. We recommend that summaries of the Commencement Bay PEIS findings be included to facilitate the evaluation of the alternatives. However, this is not to say we disagree with the preferred approach (see Comments 34 and 35). It would be easier to evaluate the alternatives if more information was presented with regards to references to the Commencement Bay PEIS.
- 4) The document should address impacts associated with the length of time it would take to implement each alternative. Land acquisition, funding, design, permitting, and construction of habitat restoration projects could take a decade or longer. Litigation could add more time. How will implementation timeframes impact the alternatives' potential for success?

Specific Comments

- 5) Section 1.8, pages 7-8: It would be helpful to understand the types of risk faced by the resources listed, for example, habitat loss and impacts to food resources.
- 6) Section 1.8, page 9: The paragraph beginning "Because of the central role that sediments ..." does not seem to fit the discussion under this section heading, "Need for Restoration Planning." We suggest this paragraph be moved to a section that includes discussion of injury assessment.
- 7) Section 1.8, page 9: Please state which bird assemblages were used to assess the value of habitat to birds, similar to how specific fish species were listed. Also, present more information on how NOAA evaluated the potential loss of natural resources in terms of fish and bird habitat.
- 8) Section 2.1, page 11: Please add the Draft Feasibility Study for Lower Duwamish Waterway to the list of documents detailing contamination and progress on remediation (*AECOM 2009. Draft Feasibility Study for Lower Duwamish Waterway. Prepared for US EPA and Department of Ecology by AECOM, Seattle, WA*). Also include the East Waterway Operable Unit Existing Information Summary Report (*Anchor Environmental and Windward Environmental 2008. East Waterway Operable Unit Existing Information Summary Report. Prepared for US EPA by Anchor Environmental and Windward Environmental, Seattle, WA*).
- 9) Section 2.1.1, pages 11-12: In general, air quality concerns include a broader area and source than the Lower Duwamish River corridor. If air quality is included, the text should link air quality concerns from the river corridor to natural resources covered by the restoration plan.
- 10) Section 2.1.2, page 12: The King County report cited did not evaluate water quality conditions on the majority of the Lower Duwamish River. It focused on the very upstream segment as well as tributaries to the Duwamish River. King County's Water Quality Assessment of the Duwamish River and Elliott Bay would be a better source of water quality evaluation for the Duwamish River (*King County Combined Sewer Overflow Water Quality Assessment for the Duwamish River and Elliott Bay. King County Department of Natural Resources, Seattle, WA, 1999*). The Lower Duwamish Waterway Remedial Investigation would be another source of water quality information (*Windward 2007. Lower Duwamish Waterway Remedial Investigation Report; draft. Prepared for the USEPA and Washington DOE, Seattle, WA*).

- 11) Section 2.1: We recommend adding a subsection that discusses sediment quality to make Section 2.1 complete, in addition to the existing subsections that address air quality, water quality, and climate change.
- 12) Section 2.2, page 14: In the first paragraph of this Section, the term “rock breakwaters” should be replaced with “rock revetments.”
- 13) Section 2.2, page 14: The last sentence of the second paragraph is not appropriate in this section. Please delete it or move it to a more appropriate section.
- 14) Section 2.3, pages 15-16: Additional information on fish species found in the river can be obtained from the Lower Duwamish Waterway Remedial Investigation (RI). A number of fish trawls were conducted and the results of these are summarized in the RI.
- 15) Section 4.1, page 25: The explanation of Federal Trustee responsibilities in the second paragraph does not acknowledge the role of local governments and their responsibilities related to Trust Resources. Local governments are clearly identified in CERCLA and OPA (“the Acts”) among the entities with resources “belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by...” Local government responsibilities include: (a) Metro (now King County), under state legislation, is responsible for water quality in the central Puget Sound region in portions of Water Resource Inventory Areas 7, 8, and 9; (b) Local governments regulate land use, which is key to the ability to protect and restore natural resources defined under the Acts; (c) Under the Growth Management Act (GMA), local governments have the responsibility to protect critical areas including the lower Duwamish River; (d) King County and other jurisdictions own, manage, and hold in trust various resource lands and critical habitat in the Habitat Focus Areas; and (e) As general purpose governments, local governments have the responsibility to protect the health and welfare of the public, which includes public resources such as air, water, and land. Local governments have trustee responsibilities and should be consulted in the development of restoration plans and related decisions.
- 16) Section 4.1, page 25: The third paragraph in Section 4.1 states “Injuries have been documented...” Please list all of these documents. Also clarify any intended difference between the statement in the last sentence of the paragraph and the discussion of injuries presented in Section 1.8.
- 17) Section 5.2, page 27, first sentence: Please provide citations for where the Trustees have documented key natural resources in the lower Duwamish River as well as injuries to those resources. This information is needed to determine the appropriateness of the restoration plan and adequacy of the PEIS.
- 18) Section 5.2, page 27, first paragraph: Please provide more specific information on the services the Trustees believe may have been injured, for example, what recreational services or non-consumptive may have been injured?
- 19) Section 5.2, page 27: The last sentence discusses how marsh vegetation increases productivity of animals and plants living in and on sediments. Please note that marsh vegetation also increases productivity of salmonids and resident fish species.
- 20) Section 5.5, objective 1: We agree with this objective but find it difficult to assess the nexus without more documentation being provided in the document.

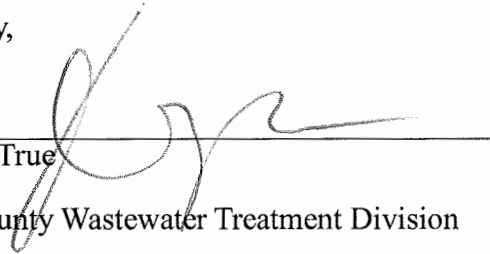
- 21) Section 5.5, objective 4: We strongly support this objective and request meaningful coordination with local governments, as they have both trustee and regulatory responsibilities.
- 22) Section 5.5, objective 4, fourth bullet: This flexibility will be the key to the long-term success of the restoration plan and we strongly support allowing all these options. See later comments on concerns with long-term stewardship needs, Comments 23 and 31.
- 23) Section 5.5, objective 5, third bullet: While we understand the need for long-term commitment and public involvement for the success of these types of programs, we feel a more formal approach is needed to ensure that long-term stewardship is maintained. Without such commitment, the efforts and expense of restoration have very low probability of achieving the designed functions. We suggest that long-term stewardship plans be required as part of every project. Those funds could then be coordinated into a single stewardship program that can coordinate with the public and non-profit organizations to provide the site work needed over time to ensure that restoration projects develop into fully functioning habitat. Programs being developed by the Elliott Bay/Duwamish Restoration Program (EBDRP) and Commencement Bay can be used as models.
- 24) Section 5.6, page 31: The first paragraph of Section 5.6 should include a reference to the Lower Duwamish Waterway Remedial Investigation Report. The reference cited in the document does not cover most of the Duwamish River.
- 25) Section 5.6, page 31: Habitat Focus Area1 (HFA) is defined as the Lower Duwamish River from the northern tip of Harbor Island to North Winds Weir. The document describes this area as the heart of the transition zone for juvenile salmon. The transition zone is described as the area where fresh and salt water mix and where juvenile salmon osmoregulate. Based on data and modeling described in the Draft Lower Duwamish Waterway Remedial Investigation Report, the transition zone would not include the entire HFA1, but a portion of it. The movement of the saltwater wedge in the Duwamish River begins at approximately river mile 3.5 (if River Mile 0 begins at the northern tip of Harbor Island). The area downstream of this point consists of marine water with only a thin freshwater lens along the surface of the river. Therefore, it seems if the restoration work is to focus on the transition zone for juvenile salmon, the areas upstream of river mile 3.5 in HFA1 and areas in HFA3 would be the focus.
- 26) Section 5.6, page 32, HFA1: Please clarify the last sentence in this section as this particular situation is not discussed under habitat types.
- 27) Section 5.6, page 32: HFA2 refers to areas of higher salinity as not being part of the transition zone for juvenile salmon; higher salinity is also found in approximately the last 3-4 miles of HFA1.
- 28) Section 6, page 36, first paragraph: An additional reason why the transition zone has moved further upstream is that the deeper navigation channel dug in the waterway allows saltwater to intrude further than would natural river bathymetry.
- 29) Section 6, page 36: We strongly encourage that landscape connectivity is highly valued as a habitat function. Particularly in an urban system, it is critical to the habitat value, especially to the terrestrial species targeted under the restoration plan.

- 30) Section 6.4, page 44: The fourth sentence in the first paragraph currently says that riparian and marsh habitats have increased sediment and pollution inputs. Please explain how the lack of riparian and marsh habitats have increased sediment and pollution inputs. We assume it is because of the lack of natural filtration and other attributes these habitats provide to reduce pollution from entering a river system.
- 31) Section 6.4, page 44: It is unclear exactly what is required for stewardship in the restoration plan. We support development of a permanent long-term stewardship program that is sustained by required contributions from each project. Once proponents meet short-term survivorship commitments, there is little incentive to continue to provide the long-term stewardship required to develop sites into fully functioning habitat. Both the EBD RP and Commencement Bay have viable models for such a program and we suggest coordinating the stewardship needed for these projects with those programs for efficiency and certainty.
- 32) Section 7.1, page 45: Please list the number of projects identified in the 1994 EBD RP concept document and those specifically in the lower Duwamish River.
- 33) Section 8, page 49: The PEIS that reviewed potential restoration approaches in Commencement Bay is key to this document and should be included as an appendix.
- 34) Section 8.1.2, page 51: The discussion of Alternative 2 includes statements about a broad range of affected species. However, the case has not been presented in this document to determine which species these may be or how they may be affected. Without this information, it is not possible to determine if this alternative is feasible and potentially more appropriate. Because this document does not clearly identify what species-specific injuries have occurred, we cannot determine if appropriate specific restorations could target those needs as effectively as the general habitat approach. We believe this information should be provided and assume it will clearly demonstrate that the conclusions presented in the document are supported.
- 35) Section 8.1.3, page 53: We support this alternative as the preferred alternative. This alternative meets the needs of the resources and provides the most realistic implementation.
- 36) Section 8.2.1.3, page 55: We believe that both action alternatives would have short-term impacts on energy and natural resources.
- 37) Section 8.2.1.6, page 56: We believe that both action alternatives would impact land and shoreline use. Land use of the areas converted to habitat would effectively be removed from their current designated use. In particular, sites in the waterway would remove industrial land from the land use inventory. In many cases it would be relatively minor, but as the GMA has identified, industrial land use is limited and is to be protected. Such impacts should be identified in the document.
- 38) Section 9, page 65: It is not clear in this section if the guidance for habitat laid out in this document has been determined to adequately address concerns of the federal agencies required for consultation under the Endangered Species Act, Magnuson-Stevens Act, Fish and Wildlife Coordination Act, and relevant Executive Orders. It would promote implementation of the restoration plan if this point was clarified and the document more clearly defined requirements for individual projects with regards to compliance with specific regulations or orders.

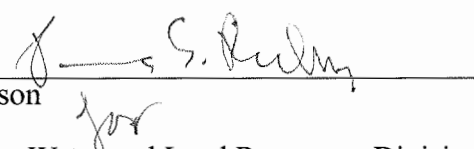
Rebecca Hoff
July 28, 2009
Page 6

Thank you for the opportunity to comment. Please contact Sue Meyer, Environmental Planner, King County Wastewater Treatment Division, at 206-684-1171 or sue.meyer@kingcounty.gov with any questions and future opportunities to comment on the Lower Duwamish River RP/PEIS.

Sincerely,



Christie True
Director
King County Wastewater Treatment Division



Mark Isaacson
Director
King County Water and Land Resources Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue, Suite 900
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OFFICE OF
ECOSYSTEMS, TRIBAL AND
PUBLIC AFFAIRS

July 28, 2009

Ms. Rebecca Hoff
NOAA
Damage Assessment and Restoration Center NW
7600 Sand Point Way NE, Building 1
Seattle, WA 98155

**Subject: Draft Lower Duwamish River NRDA Programmatic Plan and
Environmental Impact Statement.
EPA Project number 07-023-NOA**

Dear Ms. Hoff:

The U.S. Environmental Protection Agency (EPA) has reviewed the draft Environmental Impact Statement (EIS) for the **Duwamish River NRDA Programmatic Restoration Plan and Programmatic EIS** (EPA Project Number 07-023-NOA) in accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act. Section 309, independent of NEPA, specifically directs EPA to review and comment in writing on the environmental impacts associated with all major federal actions. Under our policies and procedures we evaluate the document's adequacy in meeting NEPA requirements.

The EIS is being developed to provide guidance to the Lower Duwamish River Natural Resource Trustees (Trustees) in their decision to implement restoration of natural resources that have been impacted by hazardous substance releases. The Trustees include NOAA; US Fish and Wildlife Service; the Bureau of Indian Affairs; Washington State Departments of Ecology, Fish and Wildlife Service, and Natural Resources; the Muckleshoot Indian Tribe; and the Suquamish Indian Tribe. The Duwamish River has undergone widespread contamination with numerous potentially responsible parties (PRPs) and therefore, this EIS is also intended to keep the public and PRPs informed of restoration planning and the decision making process.

We appreciate the coordination with EPA staff involved in clean up activities through our Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) authority. We believe that the EIS comprehensively describes the restoration strategy, restoration objectives, and monitoring criteria. We have assigned a rating of Lack of Objection (LO) to the draft EIS. This rating and a summary of our comments will be published in the Federal Register.

While we support the project, we have suggestions we believe would strengthen the document. In our comments on the preliminary draft EIS, we recommended inclusion of additional detail on baseline water quality. We acknowledge that this is a broad scale

programmatic EIS and that more detail will be provided as restoration proposals are submitted to NOAA and Environmental Assessments are developed. However, we believe that the programmatic EIS should also provide data and a discussion of current water quality contamination levels, details about sources impacting water quality and potential restoration effectiveness (e.g. non point source, storm water outfalls, invasive species), and bank stability.

The EIS includes good references to other restoration plans that exist for the Duwamish River. We are glad to see that the Duwamish River Cleanup Coalition Visioning Report was included in this list. This report is a great resource that helps readers understand the perspective of the impacted community. Their main concerns are about health and environmental impacts from multiple sources of pollution and they look forward to a cleaned up Duwamish River Valley. Although the EIS includes a section on public participation, and a section on cultural resources and Tribal resources that have been impacted, the EIS should provide more detail about coordination with communities of concern and how restoration proposals can address their issues. We recommend that the EIS provide some detail about the communities affected by the past contamination and industrial activities, what their concerns or ideas are with restoration projects, and how these concerns are being addressed.

Thank you for the opportunity to comment on this draft EIS. If you would like to discuss our comments further, please contact Lynne McWhorter of my staff at (206) 553-0205.

Sincerely,



Christine Reichgott, Manager
Environmental Review and Sediment Management Unit



Duwamish River Cleanup Coalition

Community Coalition for Environmental Justice • The Duwamish Tribe •
Georgetown Community Council • IM-A-PAL • ECOSS • People for Puget Sound •
Puget Soundkeeper Alliance • South Park Neighborhood Association •
Washington Toxics Coalition • Waste Action Project

Rebecca Hoff, NOAA
NOAA Damage Assessment and Restoration Center NW
7600 Sand Point Way NE, Building 1
Seattle, WA 98115
Email: Rebecca.Hoff@noaa.gov

July 28, 2009

Dear Ms. Hoff,

RE: Draft Lower Duwamish River NRDA Programmatic Restoration Plan and Programmatic Environmental Impact Statement

The Duwamish River Cleanup Coalition is the Community Advisory Group for the Lower Duwamish River Superfund Site. We represent ten stakeholder organizations, including the Duwamish Tribe, Environmental Coalition of South Seattle, South Park Neighborhood Association, Georgetown Community Council, People for Puget Sound, Puget Soundkeeper Alliance, Community Coalition for Environmental Justice, IM-A-PAL Foundation, Washington Toxics Coalition and Waste Action Project. DRCC attended the previous scoping Meetings for the Lower Duwamish River Restoration Plan and Programmatic Environmental Impact Statement and the May, 2009 presentation on the Plan

Overall Restoration Strategy. DRCC strongly supports the restoration project evaluation utilizing an ecosystem based approach rather than a single species.

Integrated habitat Restoration. We support Integrated Habitat Restoration and agree that restoration that can integrate intertidal mudflats, shallow subtidal, marsh and riparian habitat is of high value and more natural resource credits be awarded to those areas.

Coordinated Restoration and Cleanup. Emphasis on restoration projects that are coupled with site cleanup and treatment to minimize impacts to the river, fish, wildlife and human communities .

Long-term Monitoring, stewardship and site maintenance. DRCC supports the commitment to long term monitoring, ongoing stewardship and maintenance. NOAA and the trustees should specify what range of mechanisms "will be established by the Trustees to ensure long-term stewardship of NRDA sites."

Partnerships Opportunities. Opportunities to include private property of businesses that are not classified as PRP's but are adjacent to NRDA restoration sites should be pursued in order to increase size and functionality of habitats.

Inclusion of public in restoration planning, implementation and monitoring. Emphasis should be given to local business and workforce including utilizing local educational and training institutions toward that end.

Marine fish, shellfish, birds, juvenile salmonids. DRCC support the “highest priority for Habitat Focus Areas are assigned to HFAs that provide habitat for all the injured groups of species identified by the Trustees (marine fish and shellfish, birds, juvenile salmonids).” Clams and other shellfish are historical traditional tribal foods and should continue to be a high priority for habitat recovery along with salmon, both adult and juvenile.

WRIA 9. Emphasis should continue to be given to the fish habitat needs and goals developed by the Green-Duwamish Fish Habitat Enhancement Group/WRIA 9 Steering Committee.

Integration of Restoration with Cleanup. DRCC strongly supports integration of habitat restoration with the EPA riverwide cleanup the Department of Ecology Source Control efforts. This will reduce cost, encourage cleanup that is habitat restoration focused from the onset and reduce the impact on the surrounding communities by a prolonged clean up and restoration process.

Public Access. DRCC would like to see a high priority for projects that integrate habitat restoration and public access. long term public access to the river ensures long term support for monitoring and stewardship.

Public Involvement. The RI/FS for the Lower Duwamish Waterway is carried out under an enhanced Public Participation Plan. The Duwamish River Valley Residents have come to expect that level of public. DRCC encourages public involvement including outreach to immigrant, Latino and Pacific-Islander populations. NOAA and the Duwamish Trustees should ensure a robust public involvement and review process for each NRDA restoration project under consideration.

Timelines and Metrics for Recovery. DRCC supports more rigorous timelines for completion of the individual restoration plans and for the overall riverwide restoration. In addition, we encourage specific metrics for measuring salmon, wildlife and habitat recovery. i.e. How will we know when populations and natural resource services are recovered?

Lower Duwamish River. DRCC supports a strong emphasis on projects in the Lower Waterway. Projects outside the waterway are a low priority.

Thank you for the opportunity to review the Lower Duwamish River NRDA Programmatic Restoration Plan & Programmatic Environmental Impact Statement.

Thea Levkovitz
Duwamish River Cleanup Coalition
thea@duwamishcleanup.org



July 28, 2009

Rebecca Hoff
NOAA Office of Response and Restoration
7600 Sand Point Way NE
Seattle, WA 98115
Via email: DuwamishPEIS.DARRP@noaa.gov

RE: Draft Lower Duwamish River NRDA Programmatic Restoration Plan and Programmatic Environmental Impact Statement

Dear Ms. Hoff,

Thank you for the opportunity to comment on the *Draft Lower Duwamish River NRDA Programmatic Restoration Plan and Programmatic Environmental Impact Statement*, dated May 22, 2009.

People For Puget Sound is a nonprofit, citizens' organization whose mission is to protect and restore the health of Puget Sound and the Northwest Straits.

Background: CERCLA allows trustees to seek damages for injury to, destruction of, loss of, or loss of use of natural resources. The process that must be used for restoration uses selection criteria (extent of restoring resources that have been impacts, likelihood of success, risk of collateral injury, and effect on public health and safety, and cost). Responsible parties and third parties can do the work.

The NRDA process relates to the multiple Superfund cleanups in the Duwamish/Elliott system (Lower Duwamish, Harbor Island and Lockheed W and RCRA sites). Technical approach will be the same as Commencement Bay.

The programmatic EIS is designed to be general for the whole program but more specific efforts will accompany each project.

Our specific comments follow:

1. **Overall approach.** People For Puget Sound agrees with the ecosystem approach selected in this plan, specifically the Integrated Habitat Restoration Approach (rather than a species-specific approach). This will integrate habitats to maximize ecological function, looks to long-term sustainability and includes a commitment to stewardship. We agree that the highest priority (as identified by the WRIA effort) is marsh and mudflat, followed by riparian buffers.

MAIN OFFICE	NORTH SOUND	SOUTH SOUND
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2. **Integration of restoration with cleanup.** Integration of restoration with cleanup is an excellent idea. We believe that this should be a high priority and these projects should be given an incentive. Not only will it be more cost effective, it will also help push cleanup efforts to be more habitat-friendly from the start.
3. **Scope.** We object to allowing any projects outside of the Duwamish Elliott geographic area. The damage occurred in this area and the restoration needs to also occur here. There are plenty of needs within the lower river and the bay.
4. **Goal too low.** A goal of “restore injured natural resources to baseline by helping improve the ecosystem of the Lower Duwamish River to a more acceptable condition that can support both natural resources and human use of the system.” is too low a bar. We need high quality habitat, not “acceptable” habitat.
5. **Groundwater.** Groundwater – its interaction with the system – has been poorly characterized in the lower watershed to date. This should be included in evaluations.
6. **Climate change.** We believe that priority should be given for restoration efforts that show a clear plan that the site will be able to adapt with Climate Change impacts, such as sea level rise or significantly changed hydrologic regimes.
7. **Long-term stewardship.** We strongly support long-term stewardship as this ensures that our dollar investment is protected. The draft plan needs to more clearly require this (on page 31). The term “encourage” is not adequate.
8. **Size of restoration projects.** We support giving small projects more priority rather than what is proposed. Linear and small, frequent projects in this constrained watershed can make sense and improve the corridor function of extant habitats. It seems unnecessary in this system to give more priority to large projects.
9. **Technical valuation.** This is a significant deficit in this document as the omission of the technical valuation approach hampers public understanding of the program. The specific technical approach should be included as an appendix to this plan. It is difficult for the public to determine that the habitat will be valued in a transparent way for this area. A highly detailed description is not needed but a basic overview, basically a 2-4 page overview of the approach, the types of factors taken into consideration, a referral to the Commencement Bay documents (specifically Appendix C), representative species, habitat values (and general range of these), species weighting, what qualifies as “fully functional,” “baseline adjusted,” and “degraded” and values associated, habitat polygon determination, time period for recovery. In addition, the injury assessment process should be included.
10. **Production ratio.** In the Commencement Bay process “a 1:1 productivity ratio is assumed for the level of ecological services provided by created relative to natural habitats. This implies that restored habitats will be as productive as natural habitats in terms of all associated services. There is uncertainty associated with the outcome of restoration projects...” We disagree that 1:1 is adequate because a certain percentage of the habitat WILL fail. The Trustees are asking us to take it on faith that monitoring, etc. will ensure 100% habitat and this is unreasonable. In addition, as an entity responsible for several restoration projects in the Duwamish, we can vouch for the considerable long term effort needed to control invasive species until plant succession

creates an adequate riparian canopy. The temporal loss of habitat function while this succession is taking place should be incorporated into replacement ratio requirements. Washington Department of Ecology provides guidance on this issue.

Document style:

1. **Abstract.** The abstract needs to be improved. As written, it doesn't really convey the facts of the document and therefore does not stand alone. We suggest that it be rewritten to be more specific to the specific situation of this plan rather than a generic abstract that could apply to any site.

Thank you for your consideration. If you have any questions, please contact me at (206) 382-7007/htrim@pugetsound.org.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Heather Trim', with a stylized, flowing script.

Heather Trim
Urban Bays and Toxics Program Manager



Port of Seattle

DATE: July 28, 2009

TO: Rebecca Hoff
NOAA Office of Response and Restoration

FROM: Kathy Bahnick, Geo. Blomberg
Seaport Environmental Programs

SUBJECT: Comments—Draft Lower Duwamish River NRDA Programmatic
Restoration Plan and Programmatic Environmental Impact
Statement

Please find below comments and notes regarding the 5-22-09 draft Lower Duwamish River NRDA Programmatic Restoration Plan and Programmatic Environmental Impact Statement. The port is grateful for the opportunity to see the draft EIS take shape. In addition, the port is pleased for the contributions your office made to the port's recently completed Lower Duwamish River Habitat Restoration Plan (final document dated 7-7-09). The ability to collaborate in planning, and potentially implementing, habitat improvements in south Elliott Bay and the Duwamish Waterway is an essential element of successful fish and wildlife restoration.

Executive Summary:

The executive summary derives from the body of the draft EIS, however, several of the summary statements would benefit from using descriptions presented in Chapter One and Chapter Five. In particular, discussion of habitat focus areas, use of an integrated habitat restoration approach, restoration goals, and restoration planning is expertly evaluated in sections 1.7, 1.8, and 5.1 through 5.6. The executive summary would be improved using more similar statements and evaluations.

Discussion under Restoration Goals confuses injured natural resources with the effects of past physical alteration of south Elliott Bay and the Duwamish River estuary. It is important to clearly distinguish between CERCLA decision-making, subsequent natural resource damage determinations, and derivative fish and wildlife habitat restoration actions. The latter may be based on appropriate environmental planning, recognizing the context of past changes, however, natural resource damages are linked with specific applicable laws and more recent timeframes.

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Item (2), under Trustees' Primary Objective, notes that the trustees seek a net gain of habitat function beyond existing conditions. It is important that readers understand that this objective is based on CERCLA (and other applicable laws) NRD determinations, distinct from past environmental changes.

The para under Desired Types of Restoration clearly summarizes the hierarchy of restoration goals. The statements refer to aquatic resources and services lost due to the effects of contamination. Natural resources service is not well defined in the body of the EIS and using the term in the summary statement is confusing.

DEIS comments listed by section

Sections 1.1 and 1.2, refer to the decision-making sequence linking CERCLA, the Elliott Bay Trustee Council, and the damage assessment process. The objective of the trustees is outlined, however, the damage assessment process is ill-defined and it would be helpful to clarify and outline the process. The link between planning and the damage assessment process needs appropriate detail. The term "services" is also used, without sufficient definition. "Services" are described indirectly in Section 4.1.

Section 1.3, last para, includes an excellent description of the integrated habitat restoration approach suggested by the DEIS. This would be helpful in the executive summary, noting the need to describe "associated services".

Section 1.5, notes the benefit of integrating restoration and remediation work. The port agrees with this approach and hopes to work with your office in this respect regarding future fish and wildlife habitat restoration and enhancement actions. Discussion in this section seeks to distinguish between primary restoration and compensatory restoration. The distinction is unclear and, although the DEIS pertains to compensatory actions, later statements are not entirely clear regarding primary in contrast with compensatory restoration, particularly regarding implementation of timely and efficient remedial restoration actions

Section 1.6.2 notes economic analyses important to natural resource damage assessments. It would be helpful to include reference materials in this instance. This section uses "natural resources and services" throughout, without any definition.

Section 1.7 is unclear regarding the distinction between CERCLA-related damages and

past physical development in the area of evaluation, particularly relating to baseline conditions. Items (1) and (3) are clear, while item (2) is not sufficiently analyzed or evaluated in order to link the statement with the body of the DEIS. Finally, the last sentence must be clear regarding compensatory actions based on a stated baseline.

Section 1.8, provides important context and background. It is important to note that by 1920 approximately 75 percent of the habitat features emphasized in the DEIS as restoration objectives had been lost due to physical changes, with approximately 15 percent additional change prior to 1940. This simply notes that the scope of change that shaped the present in urban/industrial waterway took place more than 60 years ago. It is important to refer to resident and migratory marine fish, mammals, and birds, as well as anadromous fish. The LDW superfund site includes 4.6 miles of the 5.2 mile long Duwamish Waterway. This section also mixes Harbor Island and Lockheed West superfund decision-making with the lower Duwamish context. Is the intent of the DEIS to cover resource damages from all three superfund sites? If the Lockheed West superfund site is included in restoration planning, should the plan include the affected portion of Elliott Bay as an appropriate focus area? Later DEIS statement indicate the rationale for extending restoration decision-making from the north margin of Harbor Island to approximate river mile six (total of seven river miles), however, including these additional CERCLA matters requires explanation.

Sections 1.8.1 and 1.8.2 include very useful statements indicating “what” the restoration plan will do and the “benefits” of restoration planning. However, the first sentence in Section 1.8.2 does not reflect present environmental decision-making and over-states the ability to alter aquatic area resources without directly linked compensatory mitigation actions.

Section 2.0 can be improved. Seven miles separate the north end of the West Waterway from North Winds Weir. The Duwamish Waterway is 5.2 miles in length, with the West Waterway approximately 0.9 miles long.

Section 2.1 would be more clear with the addition of information describing the timeline for compensatory restoration decision making.

Section 2.1.3, page 13, third para: Clarify if term “wetland” refers to emergent plants and marsh.

Section 2.3 includes a very useful summary of biological resources. In light of subsequent statements relating to native vegetation and riparian environments, including off-channel areas and large woody debris, it would be useful to describe forested wetland/tidal swamp in context. Terminal 30 no longer supports nesting glaucous-winged gulls. It would be useful to refer to river mile or study mile for some of the features noted. For example, Kellogg Island is located at approximately river mile 1.3.

Section 4.1, last para, includes a well written description of the relationship between injured resources and cleanup remedies.

Section 5.1 repeats the potential for confusing CERCLA-related natural resource damages in the lower Duwamish River with the historic scope of physical change in the Duwamish estuary.

The statement in second para, Section 5.2, firmly establishes the link between habitat restoration and injured resources.

Section, 5.3, describes key habitats in concise statements. As with later text (page 39) it would be useful to emphasize export of detritus from emergent plants. The inter-tidal mudflat description overlooks the relative abundance of existing deep inter-tidal and shallow sub-tidal, low-slope mudflat area in the Duwamish Waterway. Riparian habitat discussion could be improved with more description of the benefits of forested wetland plant communities

Section 5.4 is another example of the need to distinguish between CERCLA related NRD actions and resource functions lost due to dredging, building or dikes, and shoreline armoring.

The discussion of process and objectives in Section 5.5 is well done.

The Section 5.6 discussion of habitat focus areas is clear, however, HFA1 abruptly introduces "mouths of tributaries" and does not clarify the insertion. This requires clarification and supporting evaluation.

Section 6 and the discussion of restoration types is well done and logical. More support

of the dimensions noted in 6.1.1 and 6.1.2 is required, however. Section 6.2.1 should note the importance of uncovering relic sediment layers, in the location of former marsh areas, as a guide to planning restoration site dimensions. Section 6.1.3 includes a list of riparian trees and shrubs. Recent experience with riparian restoration in the Duwamish Waterway includes a more extensive list of appropriate native riparian vegetation trees and shrubs.

Section 6.1.4 describes potential construction actions necessary for restoration actions. It should be noted that in all cases, excavation would entail removal of previously placed fill materials, active or in-active structures, shoreline armoring and debris. These materials often present significant un-anticipated project implementation challenges. The list is well done.

Section 6.3.2 describes adaptive management regarding fish and wildlife restoration site design, construction, and implementation. It would be useful to note that future work would benefit from incorporating successful designs and techniques used recently in the Duwamish Waterway, while avoiding past practices that did not create useful conditions or provide the most environmental resources possible.

Section 6.4 should acknowledge the need to provide temporary irrigation and control of Canada geese grazing as essential to successful establishment of riparian and marsh vegetation.

Section 7.2, Tier 2 screening, refers to the need for adequate source control to prevent re-contamination of restoration sites. It would be difficult to over-state the importance of this matter. Construction of relatively large habitat focus sites, connected with more modest habitat corridor improvements requires confidence that past sources of sediment and water column contamination are controlled. Recent experience with habitat restoration in light of superfund re-contamination oversight has required substantial negotiation and commitment of resources.

The description of typical kinds of restoration actions included in Section 8.1.3, the preferred alternative, is well stated and consistent with recent practical experience in the Duwamish Waterway.

Section 8.2.1, and the following discussion of anticipated effects, is concise and consistent with recent SEPA analysis prepared by the port's Lower Duwamish River

Habitat Restoration Plan. The analysis should include a statement relating to potential greenhouse gas emissions.

The port would be pleased to provide clarification and additional information regarding the above at your convenience.

WATER RESOURCE INVENTORY AREA 9 (WRIA 9) WATERSHED ECOSYSTEM FORUM



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Des Moines
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Federal Way
Kent
King County
Maple Valley
Normandy Park
Renton
SeaTac
Seattle
Tukwila

King Conservation District
Vashon/Maury Island
Community Council
Covington Water District
Port of Seattle
Tacoma Public Utilities
Washington Department
of Ecology
Washington Department
of Fish and Wildlife
Washington Department
of Natural Resources
U.S. Army Corps of Engineers

Washington
Environmental Council
Green/Duamish
Watershed Alliance
Trout Unlimited/Mid-Sound
Fisheries Enhancement Group
Save Habitat and Diversity of
Wetlands (SHADOW)

The Boeing Company
Master Builders Association
King County Agricultural
Commission

July 23, 2009

Rebecca Hoff
NOAA Office of Response and Restoration
7600 Sand Point Way N.E.
Seattle, WA 98115

Re: Comments on Draft Lower Duwamish River Restoration Plan &
Programmatic Environmental Impact Statement (RP/PEIS)

Dear Ms. Hoff:

Thank you for the opportunity to submit comments on the Draft Lower Duwamish River NRDA Programmatic Restoration Plan & Programmatic Environmental Impact Statement (RP/PEIS) for the Lower Duwamish River.

The following comments are offered on behalf of the WRIA 9 Watershed Ecosystem Forum, a broad-based partnership of governments, businesses, and non-profit groups working on watershed health and salmon habitat recovery in the Green/Duamish and Central Puget Sound Watershed. These comments are intended to complement the comments that may be provided by WRIA 9 partner jurisdictions such as Seattle, Tukwila, and King County.

- 1) Thank you for your responsiveness to comments provided during the scoping process in the July 31, 2007 letter from WRIA 9 Watershed Coordinator Doug Osterman. Most of the comments in that letter were acted on in the draft RP/PEIS. As a corollary, we appreciate the use in the RP/PEIS of recommendations from the 2005 WRIA 9 Salmon Habitat Plan: Making Our Watershed Fit for a King.
- 2) We concur with the policy of integrating restoration with the sediment cleanup effort under the Lower Duwamish Superfund process. The WRIA 9 Salmon Habitat Plan includes a policy (DU2 on page 7-78) supporting concurrent cleanup and restoration. We ask the Trustees to be more specific about when and how they expect to coordinate decisions about integrated cleanup/restoration with the Environmental Protection Agency, Department of Ecology, and potentially responsible parties. Greater clarity on this matter will increase the likelihood that restoration occurs sooner rather than later, which in turn will generate greater ecological value.



*Financial support provided by signers of Watershed Planning Interlocal Agreement for WRIA 9 including:
Algona, Auburn, Black Diamond, Burien, Covington, Des Moines, Enumclaw, Federal Way, Kent, King County, Maple Valley,
Normandy Park, Renton, SeaTac, Seattle, Tacoma, Tukwila*

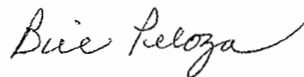
- 3) We concur with the primary focus on creation of mudflats, marshes, and riparian habitats. These are the habitat types most needed to restore/rehabilitate the estuarine ecology of the Duwamish and thus of greatest benefit in terms of salmonid habitat. We appreciate the recognition given to the importance of transition zone habitat to juvenile Chinook salmon.
- 4) We concur with the use of juvenile Chinook salmon as one of two fish species used to assess the value of restored/rehabilitated habitat to fish.
- 5) We concur with the Trustees' preferred restoration alternative: Alternative 3: Integrated Habitat Restoration. WRIA 9 partners are working to restore the ecological health of the Green/Duwamish and Central Puget Sound Watershed as a means toward recovering habitat used by Chinook and other salmonids. The proposed ecological approach, informed by the needs of juvenile Chinook as a surrogate species for other fish species, is consistent with our approach.
- 6) We concur with the approach of using Habitat Focus Areas to prioritize restoration/rehabilitation and support directing as much restoration/rehabilitation as possible into Habitat Focus Area 1, the Lower Duwamish. The WRIA 9 Salmon Habitat Plan, in fact, is counting on the success of the Restoration Program in the Lower Duwamish to complement habitat restoration work done upstream and in the marine nearshore. We encourage the Trustees to only modestly discount the value of any projects done in Habitat Focus Area 3 (the Duwamish from North Wind's Weir [RM 6.3] to Black River [RM 11]) as compared to projects done in HFA 1. While the Salmon Habitat Plan identifies the known transition zone as extending to RM 7.0, there is great ecological benefit from projects throughout the Upper Duwamish.
- 7) We strongly support the recommended use of a mechanism that funds and arranges for long-term stewardship of the restored/rehabilitated sites.

Thank you for the opportunity to comment. Please contact WRIA 9 staff Dennis Clark, 206-296-1909, dennis.clark@kingcounty.gov with any questions and regarding future comment opportunities.

Sincerely,



Dow Constantine, Co-Chair
Councilmember, King County



Bill Peloza, Co-Chair
Councilmember, City of Auburn

Cc: WEF Members



City of Seattle

Gregory J. Nickels, Mayor

Seattle Public Utilities

Ray Hoffman, Acting Director

July 28, 2009

Rebecca Hoff
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Seattle, WA 98115

Re: Comments on Draft Lower Duwamish River Restoration Plan & Programmatic
Environmental Impact Statement (RP/PEIS)

Dear Ms. Hoff:

Thank you for the opportunity to submit comments on the Draft Lower Duwamish River NRDA
Programmatic Restoration Plan & Programmatic Environmental Impact Statement (RP/PEIS)
for the Lower Duwamish River.

The City is glad to see a preference for habitat in focus area 1—the Lower Duwamish. We
understand that this area is both the most habitat poor area and the most difficult to find
opportunities to bring in habitat. Thus we agree it is important to discount to some degree
habitat proposals elsewhere in order to encourage Lower Duwamish proposals.

The manufacturing and industrial base located along the Lower Duwamish is important locally,
regionally, and globally. Therefore the City of Seattle is supportive of restoration in the
Duwamish which thoughtfully co-exists with these important economic resources.

We note that the Trustees' document recognizes that there are areas of the Duwamish with little
or no habitat at all (p. 29) and supports restoration in those areas. However follow-up on that
recognition is not apparent (see notable absence of "underserved" areas as a consideration on p.
35,#5). The City would like to see greater emphasis given to habitat in areas where no other
habitat exists. A parallel is the City's goal of having a City park within specified distance of all
residential areas. Here we might strive for habitat sites of some sort in every x mile of lineal
shoreline.

The plan, in its draft form, does not indicate that the Trustees are willing to recognize the time
value of habitat by giving greater consideration to habitat created earlier, as opposed to that habitat
that may be created 10 years hence. Although I have heard verbally that such consideration is built

into the valuation process, I think it should also be noted in the PEIS. This is as important to the potential environmental impact of the plan as the designation of primary habitat focus areas.

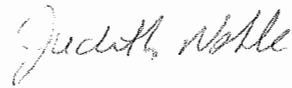
P. 4 in the draft PEIS indicates that the plan is to cover compensatory mitigation for the Harbor Island site. I assume this then also covers the East Waterway site as a Operable Unit of the Harbor Island site.

The City would like to encourage the Trustees to reflect on the value of diversity of upland vegetation related to insect production, and the consequent value to the target species which the plan addresses. In an area as devoid of upland vegetation as the Duwamish, some greater emphasis on riparian habitat is important. With some encouragement we believe it is possible to integrate this type of habitat into many of the industrial sites.

Lastly, the City would like to encourage the Trustees to quickly tackle the thorny problem of integrating habitat into remediation sites. While the plan does encourage such integration, the process for doing so in a way that assures recognition of credit by the Trustees does not appear to have been worked out. Conversations with EPA and Ecology to work through the bureaucratic aspects of this dilemma are clearly needed in order to reap the promise that the plan puts forward.

Again, thank you for seeking our comments. We look forward to continual engagement on this issue.

Sincerely,



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